

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 10-CR-20403

Hon. Nancy G. Edmunds

v.

D-1 KWAME M. KILPATRICK,
D-2 BOBBY W. FERGUSON, and
D-3 BERNARD N. KILPATRICK,

Defendants.

_____ /

JURY TRIAL
VOLUME 46

Detroit, Michigan - Friday, December 7, 2012

APPEARANCES:

For the Government:

Mark Chutkow
R. Michael Bullotta
Jennifer Leigh Blackwell
Eric Doeh
United States Attorney's Office
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226

Counsel for Defendant Kwame M. Kilpatrick:

James C. Thomas
535 Griswold, Ste. 2500
Detroit, MI 48226
313-963-2420

Appearances (continued) :

Counsel for Defendant Kwame Kilpatrick (Continued) :

Harold W. Gurewitz
Gurewitz & Raben
333 W. Fort Street, Suite 1100
Detroit, MI 48226

Counsel for Defendant Bobby W. Ferguson:

Gerald K. Evelyn
535 Griswold
Suite 1030
Detroit, MI 48226
313-962-9190

Susan W. Van Dusen
Law Offices of Susan W. VanDusen
2701 S. Bayshore Dr., Ste 315
Miami, FL 33133
305-854-6449

Michael A. Rataj
535 Griswold, Suite 1030
Detroit, MI 48226
313-962-3500

Counsel for Defendant Bernard N. Kilpatrick:

John A. Shea
Alexandrea D. Brennan
120 N. Fourth Avenue
Ann Arbor, MI 48104
734-995-4646

- - -

*Suzanne Jacques, Official Court Reporter
email: jacques@transcriptorders.com*

*Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.*

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DIN1-34	8
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Detroit, Michigan

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9:00 a.m.

- - -

THE COURT: Good morning, everyone.

(Jury in 9:00 a.m.)

THE COURT: Good morning, everyone. Be seated.

Mr. Soave, I remind you that you're still under
oath.

THE WITNESS: Thank you.

CROSS EXAMINATION (Continued)

BY MR. GUREWITZ:

Q. Mr. Soave, one of the companies that you testified about
now two days ago is MPS?

A. Yes.

Q. And you said that's an industrial cleaning company?

A. Yes.

Q. One that at some point Mr. Williams became involved with?

A. Yes.

Q. And you think it's up to now an annual income of somewhere
between 35 and 55 million?

A. I think it's 35 and 50, but something like that.

Q. Okay. This company existed and you were an owner of it
along with someone else before Mr. Williams, right?

A. Yes, Roderick Rickman.

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1 Q. And was Mr. Rickman one of the owners of the company back
2 in about 2002?

3 A. Yes, I believe so.

4 Q. As one of the owners of that company, did he have access to
5 the airplanes that I asked you questions about yesterday at the
6 end of the day?

7 A. Did he have access to the airplane?

8 Q. Was he able to use them?

9 A. Well, if he asked me and I gave it to him, he would. It
10 wasn't MPS's plane. It was --

11 Q. I'm sorry, you have to speak up. I didn't understand.

12 A. I don't know what you mean by "access," you know. They
13 were not MPS's planes, so he would have to ask me if I could
14 fly him somewhere if he wanted.

15 Q. But if you did that, he would be able to -- he could ask
16 someone for approval to use the plane, right?

17 A. Yes, I think we may charge MPS for it, I don't know. You
18 know what I mean? There would be intercompany charge maybe. I
19 don't think it would be free, you know.

20 Q. Okay. And if he wanted to, he could also ask to invite
21 other people to use the plane along -- or one of the planes
22 along with him back at that time, right?

23 A. Well, if I gave him the plane, he could fill the seats the
24 way he wanted to.

25 Q. Do you recall if, in fact, Mr. Rickman was the first person

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1 who invited Mr. Kwame Kilpatrick to fly on one of your
2 airplanes back in about 2002?

3 A. I don't recall that, no.

4 Q. Is it fair to say that out of those flights that were shown
5 to you, this is -- well, I'll turn it around -- Government JET
6 Exhibit 3, and it's got a listing of dates and destinations on
7 it. You were shown that by Mr. Bullotta when you first
8 testified. Do you recall that?

9 A. Yes.

10 Q. Is it fair to say, Mr. Soave, that you don't have exact
11 memory of each one of these flights, do you?

12 A. No, I do not.

13 Q. And so you don't have memory to be able to say from your
14 own personal knowledge whether, or which ones of these flights
15 were for personal purposes, if they were; isn't that right?

16 A. For personal services for me, you mean, or --

17 Q. For anybody.

18 A. No, I don't know if we have the listing of who was on the
19 plane or not.

20 Q. There was a procedure used by City Aviation to keep track
21 of that, wasn't there?

22 A. Yes. Keep track of who was on it, you mean?

23 Q. Yes.

24 A. Yes.

25 Q. And so at some time there was actually a list that was

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1 provided of the exact names, right?

2 A. Yes.

3 Q. And do you know at some time that changed so that there
4 wasn't any longer a record kept for the company that listed the
5 names of the people who flew as passengers?

6 A. No, I don't -- I think I heard there was a change, but I
7 didn't make the change, I don't know.

8 Q. I'd like to direct your attention here to a line here that
9 is for the date of February 25, 2004 from Detroit to
10 Washington DC and return, do you see that?

11 A. Yes.

12 Q. Do you recall that Mr. Kwame Kilpatrick flew on one of your
13 planes at that time to Washington to give testimony at a Senate
14 hearing about the light blackout that I asked you questions
15 about that happened in August of 2003?

16 A. No. I mean, I wouldn't know by looking at that.

17 Q. Well, let me show you, then, something particularly about
18 the one that I've got highlighted under that, March 11, 2004,
19 Detroit/Leesburg, Virginia. You're familiar with Leesburg,
20 aren't you?

21 A. Yes, I am.

22 Q. And that's because one of the properties that you've
23 testified about that your company has developed is nearby,
24 Leesburg?

25 A. Yes.

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1 Q. How far is that from Washington?

2 A. Very -- 35, 40 minutes into DC.

3 **MR. GUREWITZ:** The next number is 34, I believe.

4 **MS. VAN DUSEN:** Yes.

5 **MR. GUREWITZ:** Your Honor, I'd like to move the
6 admission of a page from the Soave Enterprises website
7 concerning Brambleton.

8 **MR. BULLOTTA:** No objection.

9 **THE COURT:** What's the number?

10 **MR. GUREWITZ:** I'm sorry, DIN1-34.

11 **THE COURT:** Received.

12 (Defendants' Exhibit DIN1-34 received into
13 evidence.)

14 **BY MR. GUREWITZ:**

15 Q. Can you see that, Mr. Soave?

16 A. Yes.

17 Q. What exactly is Brambleton?

18 A. It's a community of homes and a town center.

19 Q. The description that you have on your website for Soave
20 Enterprises describes it as a 2,200-acre award-winning master
21 planned community about 32 miles from Washington, DC.

22 A. Yes.

23 Q. That's accurate, isn't it?

24 A. Yes.

25 Q. And do you remember, in fact, that you flew there with

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1 Mayor Kilpatrick so that you could show him the development,
2 isn't that right?

3 A. Yes, I remember very well.

4 Q. Part of the reason for doing that was that you and he had
5 discussions about the possibilities of development in Detroit,
6 and you wanted to show him an example of what could be done.

7 A. Yes.

8 **MR. GUREWITZ:** Your Honor, at this time I'd move for
9 the admission of DIN1-35.

10 **THE COURT:** Received.

11 (Defendants' Exhibit DIN1-35 received into
12 evidence.)

13 **BY MR. GUREWITZ:**

14 Q. Do you recognize the kind of format that this is,
15 Mr. Soave, request for company plane?

16 A. No, I don't usually see that.

17 Q. When the plane was used back in 2004, who had the
18 responsibility, if you can remember, where was the
19 responsibility to make up these kinds of records?

20 A. I don't -- I really don't know.

21 Q. This is, though, consistent with what you've just described
22 as a trip that you took with Mayor Kilpatrick on that occasion?

23 A. Yes. I don't know if that was the date, but, yes, I mean,
24 we went, we went there.

25 Q. This was one of the times that you testified about that you

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1 and Mr. Kilpatrick traveled together.

2 A. Yes.

3 Q. And during that, did you go up and come back on the same
4 day, if you remember that?

5 A. Yes.

6 Q. You obviously talked about what Brambleton was at that
7 time, right?

8 A. Yes.

9 Q. And you talked about how that, how real estate development
10 could then fit into the plans for Detroit, right?

11 A. Yes, and he liked certain, one of the condo layouts, he
12 really liked, I remember.

13 Q. That was in March of 2004. The first one that's listed on
14 this sheet that you testified about yesterday that happened in
15 connection with the power going out was in August of 2003, and
16 from this time period, then, we've got these trips following
17 after that, including the one up to Leesburg.

18 Do you remember after that that your plane was, or a
19 plane from the company was provided to transport people up to
20 the Mackinac conference in June of 2004?

21 A. I mean, vaguely.

22 Q. And is that something that you have gone to yourself?

23 A. Yes.

24 Q. It's a yearly conference, isn't it?

25 A. Yes, it is.

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1 Q. Why do you go to it?

2 A. I don't know why I used to go. I know why I don't go now.

3 Q. Why is that, Mr. Soave?

4 A. There are too many politicians up there when you go.

5 Q. When did you stop going?

6 A. I don't know, a few years ago.

7 Q. And before that how many times did you go?

8 A. You know, I don't know, three, four times, maybe five, I
9 don't know. It was a long time, you know.

10 Q. You made your plane available to take people up such as
11 Brooks Patterson?

12 A. Yes.

13 Q. How many times did he fly up there with you?

14 A. I don't know. Whatever, I mean, I would, especially when I
15 was going, I would ask people if they want to go so I
16 brought --

17 Q. -- politicians?

18 A. Yes.

19 Q. That Mackinac conference is one that happens every year
20 with people talking up policy in the State of Michigan?

21 A. Yes.

22 Q. Those are things that are certainly of interest, they have
23 been to you and your company, right?

24 A. Yes.

25 Q. So that there would be, in addition to you, there would be

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1 other people from your company who would go along as well?

2 A. Yes.

3 Q. So that you all could have an opportunity to participate in
4 discussions, right?

5 A. Yes.

6 Q. Formal and informal?

7 A. Yes.

8 Q. That is to go to meetings and to socialize with people,
9 right?

10 A. Yes.

11 Q. Because that's an important part of the business that your
12 company has done?

13 A. Yes.

14 Q. And at the top of the second page of Exhibit JET3 is a
15 reference to a flight on June 4. Do you see that, to Mackinac
16 Island?

17 A. Yes, I do.

18 Q. Now, below that, on July 24, 2004, is a record of a flight
19 from Detroit to East Hampton and East Hampton to Boston.

20 I'm sorry?

21 **A JUROR:** Could I have the, see DIN1-35?

22 **MR. GUREWITZ:** You'd like to see that again?

23 **A JUROR:** No, you said it's Page 2.

24 **MR. GUREWITZ:** Page 2 is JET3, JET-3, Page 2.

25 Your Honor, at this time I'd like to move for

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1 admission of DIN1-36.

2 **MR. BULLOTTA:** No objection.

3 **THE COURT:** Received.

4 (Defendants' Exhibit DIN1-36 received into
5 evidence.)

6 **BY MR. GUREWITZ:**

7 Q. This is another document that's called a request for a
8 company plane. It's the kind of record that was kept by your
9 company, right?

10 A. Yes.

11 Q. And this indicates that the date of the flight was July 24,
12 2004, do you see that?

13 A. Yes.

14 Q. And the place is Detroit to Long Island, and then it says
15 Long Island -- I'm sorry, Long Island/Hampton and then
16 Logan/Boston, do you see that?

17 A. Yes.

18 Q. At the bottom of this page it indicates that part of the
19 purpose of this trip was to go -- was a democratic convention
20 after Logan/Boston, do you see that?

21 A. Yes, I see it.

22 Q. Do you recall that you agreed to make your plane available
23 to fly the mayor to public functions of a political nature to
24 what is described there as a democratic convention?

25 A. I must have. I mean, I must have agreed to it, you know.

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1 Q. You don't have specific memory right now of the details of
2 this?

3 A. I don't have a specific memory but ...

4 Q. Do you have memory that Mr. -- that Mayor Kilpatrick was a
5 member of the Democratic National Committee back in 2004?

6 A. I mean, not exactly, but I know he was very involved in
7 democratic politics.

8 Q. And it would have been part of his responsibility to attend
9 meetings of that, of the controlling body of the democratic
10 party for the country and speak at those occasions?

11 A. I would assume, yes.

12 **THE COURT:** Yes?

13 **A JUROR:** Could you please place the exhibit back on
14 and bring it up so we can see the bottom of it.

15 **MR. GUREWITZ:** Sure.

16 **BY MR. GUREWITZ:**

17 Q. This indicates that the passengers included
18 Mayor Kilpatrick, DeDan Milton and Sergeant DeWayne, do you see
19 that?

20 A. Yes, I do.

21 Q. And at the bottom, it also indicates that, as recorded in
22 the records of your company, the approval on this is ALS.
23 Those are your initials, aren't they?

24 A. Yes.

25 Q. And the approval that you provided was for the mayor to fly

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1 out that way and to fly back on a commercial flight, isn't that
2 right?

3 A. Yes.

4 Q. You agreed to do this because you thought it was an
5 appropriate thing for your company to make its plane available
6 for the mayor of the City of Detroit and his party to attend an
7 event such as that, isn't that right?

8 A. Sure, yes, I did.

9 Q. Now, going back to Page 2 of JET Exhibit 3, there is an
10 entry for May 19, 2006. Do you see that? Detroit to
11 Cleveland?

12 A. Yes.

13 Q. You're familiar with a gentleman named Dan Gilbert, aren't
14 you?

15 A. Yes.

16 Q. Who is he?

17 A. He's, he owns Quicken Loans.

18 Q. Did he also own a, or does he own a basketball team?

19 A. Oh, yes, yeah, he owns Cleveland.

20 Q. What team is that?

21 A. The Cleveland Cavaliers.

22 Q. So you, did you have conversations with Mayor Kilpatrick
23 about his attempts to talk to Mr. Gilbert about moving people
24 from Quicken Loans back into the City of Detroit?

25 A. I think we did have a conversation about it, and I think

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1 they went to a game there, I believe.

2 Q. For the purpose of -- I'm sorry, I didn't mean to cut you
3 off.

4 A. Yeah, I don't know if the Pistons were playing Cleveland or
5 what. I vaguely remember. I know there was a game.

6 Q. Like what you described happens at Mackinac Island,
7 sometimes official kind of business is conducted at sports
8 occasions when people can get together and talk, right?

9 A. Yes.

10 Q. And one of the things that you understood was going to
11 happen was that Mayor Kilpatrick was going to talk with
12 Mr. Gilbert about moving people from his company into downtown
13 Detroit, right?

14 A. I think he was talking to him at that time about that, yes.

15 Q. And since that time, that, in fact, has happened, hasn't
16 it?

17 A. Yes, in a big way, too.

18 Q. Do you know if this particular meeting played a significant
19 part in reaching an agreement on that happening?

20 A. I would not know that. You'd have to ask the mayor that.
21 I wasn't on the trip.

22 Q. Do you know, though, that it was Mayor Kilpatrick who
23 reached the agreement and closed the deal on that happening?

24 A. I believe it was. I was happy to help. If that was any
25 help, that's great.

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1 Q. So during this time period, Mr. Soave, you were happy to
2 provide the planes of City Aviation, one of the companies that
3 you own, to help the city carry out its civic purposes, isn't
4 that right?

5 A. Yes.

6 Q. You've provided some testimony about spending time in
7 Naples, Florida, isn't that right?

8 A. Yes.

9 Q. You have a residence, a home, condominium there, don't you?

10 A. Yes.

11 Q. And, in fact, you also own property there yourself, don't
12 you?

13 A. Yes. I build, I build condos there.

14 Q. Nearby Naples, Florida, the developments that you have
15 there include one called the Towers of Moraya Bay, M-o-r-a-y-a?

16 A. Yes.

17 Q. What is that, please?

18 A. It's a beach-front condo building.

19 Q. It's a high-rise?

20 A. High-rise, yes, 72 units.

21 Q. Okay. You have developed a property there called The
22 Dunes?

23 A. Yes.

24 Q. And that's in the same general area?

25 A. Yes. It's seven buildings, about 600 units.

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1 Q. And the third one that you have there is called Regatta at
2 Vanderbilt Beach, right?

3 A. Yes.

4 **MR. BULLOTTA:** I'm just going to object. We've
5 already gone over this, I think, what he owns.

6 **THE COURT:** Yeah, Mr. Rataj did this.

7 **MR. GUREWITZ:** This is a different subject, though,
8 Your Honor. I just wanted to lay the foundation for the next
9 question.

10 **THE COURT:** Okay.

11 **BY MR. GUREWITZ:**

12 Q. I appreciate Mr. Bullotta's impatience, but let me direct
13 your attention to an occasion that you traveled to Naples with
14 Mayor Kilpatrick to look at those developments.

15 A. Yes.

16 Q. I'm going to show you Page 3 of the same summary exhibit
17 that I've been referring to, JET-3, and there's an entry there
18 for a round trip from Detroit to Naples and Naples back to
19 Detroit on December 27, 2006. Do you see that?

20 A. Yes.

21 Q. Do you remember if that's about the time that you invited
22 Mayor Kilpatrick to travel on your plane with you to go look at
23 your developments there?

24 A. No, I don't, but I know I -- I know I did invite him. I
25 don't remember, you know, the dates.

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1 Q. Do you remember if this was a day trip?

2 A. I don't remember.

3 Q. Did you go down there particularly to show this development
4 to Mayor Kilpatrick because of interest in developing property,
5 residential property in the downtown area along the waterfront
6 of Detroit?

7 A. I think at one point he was looking for a place, and maybe
8 at another point he was looking at some development. Both.

9 Q. One of the things that you spent some time talking with
10 Mayor Kilpatrick about was the importance of creating
11 residential housing in the central part of the city to help its
12 growth, right?

13 A. Yes, I did.

14 Q. And this, your developments of three different kinds in
15 Naples was an example of that, wasn't it?

16 A. Well, I don't, I don't remember those particular times but
17 it was a couple times. Same thing with Brambleton, you know,
18 he liked some of those units and he thought it might be a
19 possibility. It was the same type of thing.

20 Q. During this time period, you obviously were developing the
21 relationship that you began with Mayor Kilpatrick as a friend,
22 isn't that right?

23 A. Well, it was a dual purpose. I mean, anything to help the
24 city. I thought they needed some, some housing downtown. I
25 think we were talking about the property where, you know,

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1 between Stroh's and the Renaissance, at one point I know we
2 talked about that, and he thought some of those condos could
3 work in there.

4 Q. You were developing a relationship with this young mayor
5 who you liked, weren't you?

6 A. Well, yes.

7 Q. And you continued to feel generous about making your planes
8 available for his use, isn't that right?

9 A. I mean, yes.

10 Q. There came some point in time that you indicated that your
11 company issued for tax purposes an IRS form called 1099 to you
12 which meant that you received personal income for the plane
13 usage, isn't that right?

14 A. Yes.

15 Q. You were given advice from somebody else, you employ
16 professionals to give you tax advice and they said that was a
17 necessary thing to do?

18 A. They just handled it, you know. We didn't talk about it.
19 They handle it the way they think it's the best way.

20 Q. Somebody made a decision, created the document and gave it
21 to you and you just took care of it, is that right?

22 A. No, no, I didn't take care of it.

23 Q. They took care of it?

24 A. They file my -- huh?

25 Q. I'm sorry, I didn't mean to cut you off.

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1 A. They file the way they -- they know what's going on. It's
2 my financial people and they thought that they should handle it
3 that way. They didn't discuss it with me, you know.

4 Q. Well, were you aware or advised in connection with that
5 that if this expense that was shown on these 1099's was handled
6 in that way for you that that would make the plane usage a
7 deductible expense for your company?

8 A. I think they said if it was used the wrong way, it would
9 be, so they made it as a -- I don't know. I don't know what
10 you just asked me. Ask me again.

11 Q. Well, if you don't understand --

12 A. No, I don't understand. You wanted to know if it was going
13 to be a deduction for the company?

14 Q. Right. If you don't know --

15 A. I don't know.

16 Q. -- that, I'm not pushing for an answer.

17 A. I know they didn't want it to be a political contribution,
18 so they handled it the way they did.

19 Q. You did have conversations with people at the company about
20 whether this could be considered to be a political
21 contribution, didn't you?

22 A. Well, you know, at some time we did. I don't know exactly
23 when.

24 Q. So that the people who you relied upon for advice talked
25 about a concern they had -- let me rephrase that -- talked to

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1 you about a concern that maybe this could all be viewed as a
2 political contribution, isn't that right?

3 A. They discussed it, they got some outside opinion, I think,
4 they told me, "This is the way we want to handle it." I said,
5 "Fine."

6 Q. Do you remember that they, somebody consulted with a
7 well-respected lawyer named John Pirich to get an opinion about
8 whether this could be viewed as a political contribution?

9 A. I believe that's true.

10 Q. And do you remember that the opinion you got back was that
11 this would not be treated as a political contribution?

12 A. Yes. I don't remember that exactly, but they acted
13 accordingly.

14 Q. Do you think this happened around 2004?

15 A. No, I don't -- no. There's a file for that.

16 Q. Okay. Whenever this happened after you got, you got the
17 opinion -- or the company, whoever actually got the opinion got
18 it, the company went on providing the use of the plane for
19 Mayor Kilpatrick, didn't it?

20 A. Yeah, I believe so.

21 Q. And that's because the concern that was expressed to you by
22 the people you work with was resolved by that opinion, wasn't
23 it?

24 A. You know, I don't know if they were resolved in their mind,
25 but they acted the way they thought they should after they got

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1 the opinion.

2 Q. Do you know that after the year 2006 that your company
3 didn't any longer keep any records of the names of the
4 passengers on the flights that were done by your airplanes?

5 A. No, I didn't know then, but I heard about it later.

6 Q. So, then, it's not really possible by looking at the
7 records to go back and check to see who is actually on a
8 particular flight, right?

9 A. I think not. I think that's true.

10 Q. There are just a couple more things I want to ask you
11 about, Mr. Soave, and I'll be finished. One is that you
12 testified about going to New York with Mayor Kilpatrick and
13 others on two occasions, is that right?

14 A. Yes.

15 Q. Had you gone to New York before the first one of these two
16 trips around Christmastime to go shopping yourself?

17 A. Are you talking about the same year or --

18 Q. No, any time.

19 A. Yes, yes.

20 Q. And had you done it more than once?

21 A. Yes.

22 Q. Was it just something that you liked to do?

23 A. Yes.

24 Q. Did you discuss that with Mayor Kilpatrick?

25 A. I very well could have. I mean, I -- it was something I

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1 did.

2 Q. And did you suggest to him, maybe even a little bit more
3 directly, did you invite him to go along with you?

4 A. I could have. I don't remember the exact, you know, but I
5 could have. I invited other people so, I mean, that's
6 something that's --

7 Q. That's something that you did just because you wanted to be
8 kind to somebody you knew, right?

9 A. Yes.

10 Q. Okay. You testified about basketball tickets that got
11 purchased that you gave to Mayor Kilpatrick, right?

12 A. Yes.

13 Q. They were pretty expensive, weren't they?

14 A. I didn't realize they were going to be that expensive.

15 Q. So that means that you didn't really contact somebody
16 directly yourself to do it. Somebody did it for you?

17 A. Somebody contacted a broker and, you know, then I was, I
18 said I was going to get the ticket, and so I never thought it
19 was going to work out that way but it did.

20 Q. And before you knew it, you had the tickets and they were
21 paid for, right?

22 A. You know, I don't remember exactly how it went but, you
23 know.

24 Q. Okay. And you gave these two tickets to Mayor Kilpatrick
25 to go to a basketball game for the Detroit Pistons, the Detroit

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1 team, right?

2 A. Yes. It was a big game, I know that. I forgot -- I don't
3 think -- were the Pistons playing it? I don't even know who
4 was playing. I just know it was a big game, it was nationally
5 televised, I think, and I wanted the mayor to be in the right
6 seats, didn't want him to be in the fifth row or eighth row, or
7 he should be --

8 Q. Throughout this time period, you continued to have a
9 personal relationship with Mayor Kilpatrick, didn't you?

10 A. Yes.

11 Q. You considered him to be a friend?

12 A. I liked Mayor Kilpatrick.

13 Q. And you were generous to him in the ways that you testified
14 about here this morning, right?

15 A. Yes.

16 Q. And that's why you did these things, isn't that right?

17 A. Well, he had a lot to say with the things I was doing in
18 the city, so you understand. I mean, there was a dual purpose.

19 Q. That's true when you go talk to people at the Mackinac
20 conference, as well. There's always a whole range of things
21 happening that are in your mind, right?

22 A. I don't understand what you're asking me.

23 Q. Maybe that's not a good question.

24 A. Yeah, that's not too good.

25 Q. I'll remember that, Mr. Soave. I'll try to be a little bit

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1 more direct.

2 You did not discuss with Mayor Kilpatrick how much
3 these tickets cost, did you?

4 A. No, I did not.

5 Q. In fact, you were a little --

6 A. I don't think he knows --

7 Q. -- bit embarrassed about how much you paid?

8 A. And still am.

9 Q. The relationship that you had with Mayor Kilpatrick was,
10 what you just talked about is your purposes, right? You said
11 what you had in mind were the things that were from your side
12 of this relationship. You talked about more than, more than
13 just friendship, right?

14 A. Well, there was the sort of, I mean, thoughts in my mind
15 that I wanted to keep the mayor happy. He was very, he was a
16 very likeable guy and I liked the mayor.

17 Q. Those were your reasons, is that right?

18 A. My reasons were that I wanted to keep him happy.

19 Q. And you understood that, from what you could tell, that he
20 liked you and enjoyed being with you, is that right?

21 A. I think he did, you know.

22 Q. And because of your age difference, he respected, from your
23 vantage point, all the things that you told him about your
24 business career and your thoughts about the city, is that
25 right?

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1 A. You'd have to ask him that.

2 Q. Thank you very much. That's all I have. Thank you.

3 **THE COURT:** Mr. Bullotta.

4 (9:40 a.m.)

5 **REDIRECT EXAMINATION**

6 **BY MR. BULLOTTA:**

7 Q. Good morning, Mr. Soave.

8 A. Good morning.

9 Q. I think this will be over soon for you.

10 A. I hope so.

11 Q. I want to show you what's been marked DIN1-32. This is a
12 memo, and the date of that memo is March the 22nd of 2002, and
13 this would be a month before you went to go see the mayor,
14 according to your direct testimony, to talk about why the
15 contract was being held up, the \$50 million contract.

16 Now, this memo is to you from your attorney, your
17 in-house attorney, correct?

18 A. Yes.

19 Q. And I want to focus on the bottom here. Can you read this
20 conclusion into the record, please.

21 A. You want me to read it?

22 Q. Yes, would you?

23 A. "We basically need to know what are the issues and what do
24 we have to do to get them to send the contracts through to city
25 council."

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1 Q. Okay. Who do you understand the "them" to be? Do you
2 know?

3 A. I think the mayor's office or purchasing, one of the two.

4 Q. Okay. But the administration needs to send the contracts
5 to the city council, correct?

6 **MR. THOMAS:** Well, objection, he's already answered.

7 **MR. GUREWITZ:** Your Honor, I think that Mr. Thomas
8 is suggesting that I object.

9 **MR. BULLOTTA:** Hey, no fair.

10 **THE COURT:** I inferred that.

11 **MR. BULLOTTA:** I'll rephrase the question.

12 **THE COURT:** Just for the jury's edification, the
13 rule is one lawyer, one witness, that is, the same -- you can't
14 have multiple lawyers questioning and objecting on behalf of
15 the same defendant, so -- or even on behalf of the government.

16 **BY MR. BULLOTTA:**

17 Q. So Mr. Soave, then, the information that you were getting
18 at the time prior to you going to see the mayor to talk about
19 what the holdup was, was that it was stopped somewhere,
20 correct?

21 A. Yes, that was the indication.

22 Q. And where did you think it was stopped, based on the
23 information you were getting?

24 A. You know, I don't know exactly. I just know that -- I
25 think she knew I was going to see the mayor, I think, when I

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1 got that memo.

2 Q. And we've seen --

3 A. And I don't know when she sent me that memo, but --

4 Q. Okay. So you believed the contract was being held,
5 correct?

6 A. Yes. That's the information I was getting, it was being
7 held up.

8 Q. So you went to go see the mayor, right?

9 A. Yes, I called him and tried to set up a meeting and I got a
10 meeting with him.

11 Q. And you testified that when you got to the meeting, you
12 went by yourself, right?

13 A. Yes.

14 Q. And you testified that you asked the mayor what the holdup
15 was, correct?

16 A. Yes.

17 Q. And did the mayor, when you asked that question, Mr. Soave,
18 did the mayor say, "What holdup, I don't know what you're
19 talking about"?

20 **MR. GUREWITZ:** Objection, Your Honor, I understand
21 this is redirect, but it's been asked and answered many times.

22 **MR. BULLOTTA:** No, it was suggested that --

23 **THE COURT:** Overruled. You may answer.

24 **BY MR. BULLOTTA:**

25 Q. Did he say he didn't know what holdup you were talking

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1 about?

2 A. I don't know the exact words, but I know what went on at
3 the meeting. I asked him what the holdup was, he said I had
4 the wrong subcontractor.

5 Q. So then is it your testimony that he did not indicate to
6 you that he was unaware of a holdup? Do you understand my
7 question?

8 A. No. Say that again.

9 Q. Did he appear to be aware that it was being held?

10 **MR. GUREWITZ:** Objection, Your Honor, that's asking
11 for speculation. He can ask if he remembered what he said but
12 not for what was in his mind.

13 **THE COURT:** Sustained.

14 **MR. BULLOTTA:** I'll rephrase it.

15 **BY MR. BULLOTTA:**

16 Q. Did he say anything at all to you that would indicate to
17 you that he didn't know it was being held?

18 A. No, he didn't. He answered, he said -- you know, I don't
19 remember the exact words, but I mean, the gist of the
20 conversation, I remember. He said I had the wrong
21 subcontractor, I asked him, "Who should I get?" He told me I
22 should get Bobby Ferguson and that was, like, I mean, you know,
23 it was a quick message and I understood it.

24 Q. Okay. Did he ever indicate to you that he didn't have the
25 authority to hold the contract or approve the contract?

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1 A. No.

2 Q. Did he ever tell you at that meeting that he was waiting
3 for city council to approve the contract?

4 A. No.

5 Q. Is there any doubt in your mind that he was holding that
6 contract until you put Ferguson on the contract?

7 A. I know it was being held up. I didn't know who was holding
8 it up. I assume it was in his hands. He's the boss.

9 Q. He's the boss of all those folks that you were -- you were
10 shown a document?

11 A. He's the mayor, so I, you know --

12 Q. Well, let me show you. Yesterday you were shown this
13 document, it's the signature page for that contract we're
14 talking about, and there are a number of folks that are
15 highlighted, like Gary Fujita, the interim deputy director of
16 the DWSD, and looks like the purchasing director and the
17 corporation counsel. These are all folks that work for the
18 City of Detroit, correct?

19 A. Well, they worked for the water board and --

20 Q. Right, but I mean the ones --

21 A. -- the law department.

22 Q. -- are highlighted.

23 A. Yeah.

24 Q. And Mayor Kilpatrick, you said he's the boss, right?

25 A. He's the mayor so ...

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1 Q. Now, in your 30-plus years of doing business with the City
2 of Detroit, since, you said, in the '70s, had you ever had a
3 mayor hold up one of your contracts until you put a specific
4 subcontractor on the contract?

5 **MR. RATAJ:** Your Honor, I'm going to object. I
6 mean, that is so leading.

7 **MR. BULLOTTA:** I'm asking if it's ever happened.

8 **MR. RATAJ:** There's no foundation.

9 **THE COURT:** Overruled. If you recall. You may
10 answer.

11 A. No, I do not.

12 **BY MR. BULLOTTA:**

13 Q. And you were asked about, at length by Mr. Rataj about all
14 the different businesses and property that Soave Enterprises
15 owns. Despite that, did you still have concerns or did you
16 have concerns about the effect on Inland Waters if this
17 contract didn't go forward?

18 A. So are you asking me because I have a lot of properties and
19 a lot of other businesses whether I was concerned about --

20 Q. Right.

21 A. -- the Inland job?

22 Q. Right.

23 A. I was very concerned about the Inland job. It was a
24 \$50 million job.

25 Q. Did Inland have any other contracts pending at that time of

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1 that size?

2 A. I don't -- no, no, not of that size.

3 Q. Were there people whose jobs depended on that contract
4 going forward?

5 A. There were many people. Everyone was concerned and that's
6 why I was getting urged to go see the mayor.

7 Q. Did you care about your employees?

8 A. Very much so.

9 Q. You were concerned enough to go to the mayor, you said,
10 right?

11 A. Yes.

12 Q. And you were asked by Mr. Rataj, he suggested that Charlie
13 Williams was what he termed a minority front. Do you remember
14 those questions?

15 A. Yeah, I think I told him it was absolutely not true.

16 Q. And you were asked a lot of questions about the fact that
17 Charlie Williams didn't own equipment, he didn't have employees
18 at the time that you were doing this, you were bidding on this
19 contract. Do you recall that?

20 A. Yes.

21 Q. And that, Mr. Rataj talked about how Bobby Ferguson had
22 employees and had equipment, do you remember those questions?

23 A. Yes.

24 Q. When you are doing a mentoring relationship with somebody
25 who is just starting out in the business, does the mentee, the

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1 person you're mentoring, does that person usually have an
2 established business with equipment and employees?

3 A. Well, usually they're related to the work somehow, you
4 know. You try to, anyway. Not always, but you try to. And
5 Charlie certainly had some skills. I mean, he had managerial
6 skills.

7 Q. Okay. We'll get into that in a second.

8 A. Oh, okay, all right.

9 Q. I just want to ask you if, when you're doing a mentoring
10 relationship --

11 A. Yes.

12 Q. -- when you initially start off, does the person that
13 you're mentoring usually already have an established business?

14 A. Sometimes they do; sometimes they don't.

15 Q. Okay. Now, you said Charlie Williams had managerial
16 experience, is that right?

17 A. Obviously, he was the director of the, of DWSD, and they
18 had 2,000 employees and so he --

19 Q. So he was already --

20 A. You have to have something on the ball to run an
21 organization, and he did it for a long time, too, it wasn't for
22 a short period.

23 Q. Was it around almost ten years?

24 A. I don't know if it was ten years, I thought I heard five or
25 six or seven, you know.

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1 Q. Did he --

2 A. I don't know.

3 Q. Did he seem like a good person in your view to have as a
4 mentee, someone to mentor?

5 A. I thought he had a lot on the ball, and I still do, you
6 know.

7 Q. After you took him off of this project, 1368, that we're
8 talking about, and put on Ferguson, later did you continue to
9 mentor Charlie Williams?

10 A. Well, he became my partner at MPS, so we are doing it, I
11 mean, right now.

12 Q. And is Charlie Williams in charge of that company, MPS?

13 A. Yes.

14 Q. Do you know how many employees MPS has?

15 A. No.

16 Q. Is it more than ten people?

17 A. Yes.

18 Q. You said it's --

19 A. Hundred, it's over a hundred.

20 Q. Over a hundred?

21 A. Yeah, 30, 40 engineers. It's a nice, it's a nice company.

22

23 Q. Finally, last area I want to ask you about, you were asked
24 questions about whether you reported the statement by Ferguson
25 that, where Ferguson, as you found out from your, I think,

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1 Kathleen McCann, said that, "You only got the job because of
2 me," do you remember that?

3 A. I said he said, "You're only here because of me."

4 Q. Sorry, "You're only here because of me." And you were
5 asked why didn't you report that, or asked whether you reported
6 that to the mayor. Do you remember those questions? I'm just
7 asking if you remember the questions. I'm not asking for an
8 answer substantively. Do you understand?

9 A. No, I don't remember.

10 Q. Okay.

11 A. Do I remember when I was questioned why didn't I go see the
12 mayor about that?

13 Q. Yes. Remember that?

14 A. No, I don't remember.

15 Q. Okay. Well, at some point you did talk to Mayor Kilpatrick
16 about problems that you were having with Ferguson, is that
17 right?

18 A. Yes.

19 Q. And you said that you asked him, "Is Bobby still your guy?"

20 A. Yes.

21 Q. And what was his answer?

22 A. He said, "Yes, he's still my guy."

23 Q. Now, if he had said, "No, he's not my guy," what would you
24 have done, how would you have treated Ferguson?

25 **MR. RATAJ:** Your Honor, I'm going to object. That's

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1 absolutely irrelevant.

2 **THE COURT:** Overruled. You may answer.

3 A. I think we would have taken some sort of action, and we
4 would have probably lessened his workload and --

5 **BY MR. BULLOTTA:**

6 Q. What if you still had problems after that?

7 A. You know, I don't know. I would have, we would have
8 probably have done what the people told me needed to be done,
9 you know, the people in the field. They would probably do, you
10 know, if you lessen the workload and you're still having
11 problems, then you probably would not do anymore work with him.

12 **MR. BULLOTTA:** Thank you, I have no further
13 questions.

14 **THE COURT:** Okay. Mr. Rataj.

15 **THE WITNESS:** This is going to keep on going.

16 **THE COURT:** I think this is the last round, and it
17 will be short.

18 (9:53 a.m.)

19 **RE CROSS EXAMINATION**

20 **BY MR. RATAJ:**

21 Q. Good morning, Mr. Soave.

22 A. Good morning.

23 Q. I wouldn't ask you any questions if Mr. Bullotta didn't
24 stand up and ask you some more questions.

25 A. I didn't have any control over him.

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1 Q. Yeah, I know. What can you do?

2 Mr. Soave, I just have a few, and we do want to get
3 you out of here.

4 Mr. Bullotta had just asked you a question as to
5 whether or not if you knew who was holding up that contract in
6 your mind, correct? Do you remember that? He just asked you
7 that.

8 A. I was told by my -- yes.

9 Q. And you indicated just now that it was either the budgeting
10 or the mayor, do you remember that answer?

11 A. Well, I didn't say budgeting, did I?

12 Q. Purchasing, my mistake.

13 A. Purchasing, okay.

14 Q. I'm sorry.

15 A. Okay.

16 Q. You said purchasing or the mayor, you didn't know, though,
17 did you?

18 A. No, I did not know. I was told from my -- my people told
19 me that the mayor's office was holding up the contract.

20 Q. But you just answered in response to Mr. Bullotta's
21 questions that it was --

22 A. Well --

23 Q. -- either purchasing or the mayor but --

24 A. Well, then let me, let me rephrase it then.

25 Q. No, I just wanted to make sure that I understood your

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1 previous answer to Mr. Bullotta's questions, and that's what
2 you just said under oath, isn't that true? Purchasing or the
3 mayor, you weren't sure, isn't that what you just testified to?

4 **MR. BULLOTTA:** I'm sorry, can he just ask the
5 question as opposed to asking him what he said. We all heard
6 what he said.

7 **MR. RATAJ:** Well, I just want to confirm that,
8 Judge.

9 **THE COURT:** It's okay. Go ahead.

10 **BY MR. RATAJ:**

11 Q. Right? That's what you just testified to?

12 A. If that's what I answered. I'm just telling you what --
13 yes.

14 Q. All right. Mr. Bullotta showed you what was marked
15 DIN1-33, I believe it was -- 32. First of all, I don't want to
16 belabor the point, but I just --

17 **MR. GUREWITZ:** It's 33.

18 **BY MR. RATAJ:**

19 Q. I'm sorry, DIN1-33, and that was the memo.

20 **MR. RATAJ:** It's in evidence, Your Honor. May I put
21 it up?

22 **THE COURT:** It's 1-32.

23 **MR. RATAJ:** Is it? I thought it was 32.

24 **THE COURT:** 1-32.

25 **MR. RATAJ:** Okay.

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1 **THE COURT:** It's 33? You know, when he just put it
2 back up, he said 1-32, so I have to go back and look from
3 yesterday.

4 **MR. RATAJ:** It's 33, Your Honor. I'm sorry for the
5 confusion.

6 **THE COURT:** Yes, 33.

7 **MR. RATAJ:** It's 33.

8 **BY MR. RATAJ:**

9 Q. Again, not to belabor the point, but that was information
10 provided to you by Susan Johnson, who was a lawyer that had
11 worked for you at that time, correct?

12 A. Yes.

13 Q. All right. Now, I want to direct your attention, sir, if I
14 can find this right, the second paragraph where it says,
15 "CS-1368, \$50 million contract was similarly approved by the
16 Board of Water Commissioners, law department and finance
17 department." Do you see that?

18 A. Yes.

19 Q. Sir, do you have any knowledge as to whether or not the law
20 department or the finance department had signed off on that
21 contract --

22 A. I have no --

23 Q. -- at that time, which was --

24 A. No.

25 Q. -- March 22?

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1 A. I would not know that, no.

2 Q. You wouldn't know that?

3 A. No, I would not.

4 Q. Let me show you something, and this is DIN1-14A, which is
5 the signature page that is already into evidence.

6 Do you see when the law department -- directing your
7 attention to right here, sir, do you see when it was approved
8 by the law department? Do you see that?

9 A. 6/19?

10 Q. Yeah, 2002.

11 A. Yes.

12 Q. So when you got that information from Ms. Johnson regarding
13 the law department having signed off on the contract, that
14 wasn't correct information, now, was it?

15 A. No, you'd have to ask her where she got that information.

16 Q. Well, I just showed you.

17 A. I don't know.

18 Q. She said that --

19 A. Yeah, I can't speak for her. That's what she said.

20 Q. Right.

21 A. That's her memo. You have to ask her.

22 Q. But I just showed you a document that the law department
23 had not signed off on it until June, correct?

24 **MR. BULLOTTA:** Object, Your Honor, this witness has
25 no knowledge, and the fact that they signed it on that date

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1 doesn't mean --

2 **THE COURT:** Well, he's acknowledged that he doesn't
3 have any information personally about whether it was or was
4 not.

5 **MR. RATAJ:** That's fine.

6 **BY MR. RATAJ:**

7 Q. Now, again, directing your attention to DIN1-33, back in
8 the second paragraph, it says, "In addition to
9 Insituform-CJ Williams was using Superior Engineering" -- or
10 strike that.

11 "In addition to Insituform-CJ Williams, we are using
12 Superior Engineering, a minority supplier we were asked to use
13 by DWSD." Do you see that?

14 A. Yes, I see it.

15 Q. Okay. So at least according to what Ms. Johnson told you,
16 DWSD was telling Inland Waters who to use as a minority
17 supplier, correct? Isn't that what it says?

18 A. You use --

19 Q. That's what it says, doesn't it?

20 **MR. BULLOTTA:** Your Honor, I'm sorry, this is two
21 questions. Is he asking him whether that happened or if that's
22 what it says? We can all see what it says.

23 **BY MR. RATAJ:**

24 Q. All right. You see what it says there, right?

25 A. I see what it says, yes.

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1 Q. So, at least according to what Ms. Johnson had learned,
2 DWSD was telling Inland Waters who to use as a minority
3 supplier, isn't that true?

4 A. That's what it says.

5 Q. Okay. Now, we know that when you had this meeting with
6 Mr. Kilpatrick, according to you, in April of 2002, you've
7 testified that you don't remember exactly what words were used,
8 correct, isn't that true?

9 A. Exact words, no.

10 Q. Right. But let me ask you this. You went there to see him
11 about 1368, correct?

12 A. Yes.

13 Q. Because it was your understanding from what you were
14 advised by your people that that contract was being held up,
15 correct?

16 A. Yes.

17 Q. Did you ever ask Mr. Kilpatrick, "Mr. Mayor, are you
18 holding up the contract on 1368, and if you are, why are you
19 holding it up?" Did you ever ask him that?

20 A. I did not, and I told you time and time again --

21 Q. Sir, did you ask him --

22 A. -- what I said.

23 Q. Sir, no, no, no.

24 A. I said, "What's the holdup?"

25 Q. No. Mr. --

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1 A. Okay.

2 Q. -- Soave. I asked you for a simple yes or no question, and
3 the answer was, "No," am I right or wrong?

4 A. Ask me the question again, please.

5 Q. At no time during the meeting with Mr. Kilpatrick in April
6 of 2002, you never asked him, "Mr. Mayor, are you holding up
7 our contract on 1368, and if you are, why?" You never asked
8 him that question, did you?

9 A. I never used those words, no.

10 Q. Okay. Now, you had testified yesterday in response to some
11 of my questions, sir, regarding your experiences in other parts
12 of the country where you went to do business. Do you remember
13 some of those questions?

14 A. No. Ask me.

15 Q. Well, okay. Let me just set it up for you. I asked you
16 some questions yesterday that when you went to other cities to
17 compete, it was your experience that certain politicians had
18 certain favorite contractors, isn't that true? Do you remember
19 me asking you that question?

20 A. I said that they liked certain contractors.

21 Q. Sure. And you indicated that, you know, you would have to
22 compete with that kind of a situation when you would go to
23 another city, for example, like Cleveland, I believe you
24 referenced at one time.

25 A. Yes.

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1 Q. Okay. And you testified yesterday that that was normal,
2 wasn't it, certain politicians --

3 A. For them to like certain contractors, yes.

4 Q. Right, it's normal, right?

5 A. It's normal.

6 Q. It's absolutely, 100 percent normal, correct?

7 A. That's right.

8 Q. Now, I want to make sure that we're all clear on this, and
9 to the best of your recollection when you met with
10 Mr. Kilpatrick in 2002 regarding this contract, you would agree
11 with me that in addition, at no time -- let me rephrase it --
12 at no time during your conversation with Mr. Kilpatrick, he
13 never said to you "Mr. Soave, if you don't use Bobby Ferguson
14 you're not going to get anymore work in the City of Detroit."
15 He never said that to you, did he?

16 A. No, and I explained that the last --

17 Q. Sir, I just asked you --

18 A. -- two, two days.

19 Q. Sir, listen --

20 A. No, he did not say those words.

21 Q. All right. I don't want to disrespect you, sir, I just
22 want to get an answer to my question.

23 A. I answered that yesterday.

24 Q. Thank you. Now, when you talked about mentoring other
25 businesses along the way, along your long, illustrious business

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1 career, you testified that you're mentoring the company, not
2 the person, am I right or wrong about that?

3 A. Yes.

4 Q. Okay. Now, we know, and you would agree with me, that
5 Charlie Williams didn't have any equipment, any employees or
6 any experience doing any kind of pipe rehabilitation, sewer
7 work and work of that nature, correct?

8 A. In this case, the person is the company. He was, he was a
9 lawyer, he had a law firm.

10 Q. But no employees whatsoever and, as we indicated --

11 A. Not that I know of.

12 Q. -- not the ability to get in there, put on --

13 **MR. BULLOTTA:** Your Honor, I object. We've gone
14 through this over and over again. We did it yesterday, and --

15 **THE COURT:** Well, you raised it --

16 **MR. RATAJ:** He just raised it.

17 **THE COURT:** You raised it on redirect, so he can --

18 **MR. BULLOTTA:** We can't keep going over the same
19 stuff or else I'll get -- I'll have to get back up and go back
20 through it.

21 **BY MR. RATAJ:**

22 Q. Mr. Williams did not have any experience, he had no ability
23 to put boots on the ground, to get in there and get muddy and
24 get dirty and do actual work, am I right or wrong?

25 A. I disagree when you say he doesn't have any experience. He

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1 didn't have boots and he didn't have, what, what else did you
2 say?

3 Q. He didn't have people.

4 A. But when you say he didn't have any experience and he ran
5 the DWSD, I don't know how you can say he didn't have any
6 experience so ...

7 Q. Well, he had -- sir, he had experience running DWSD, but
8 that's a different animal than having employees and equipment
9 that know how to go out into the field and deal with problems
10 regarding pipes and sewers and things of that nature, am I
11 right or wrong?

12 A. I was mentoring him and that was part of what we were going
13 to do for him, and you can phrase it the way you want. I
14 obviously -- and that's your opinion, he didn't. I thought
15 that he would be a good, you know, company to mentor, because
16 he did have some experience around DWSD, and we were going to
17 help him with the part he didn't have, and hopefully, at the
18 end it was going to, it was going to be fruitful.

19 Q. Well, you would agree with me that in terms of contract
20 1368 he didn't have the ability to go out and do what
21 Mr. Ferguson had the ability to do because he didn't have any
22 employees and he didn't have any equipment and he didn't have
23 any actual work experience, am I right or wrong about that,
24 sir?

25 A. Say that one more time, please. I didn't quite --

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1 Q. In terms of carrying out, in terms of carrying out the
2 provisions of contract 1368, and the goal of that contract was
3 pipe rehabilitation, Mr. Ferguson is the one who had real
4 employees, real equipment and experience to go out and actually
5 do the job, am I right or wrong, to do the work, the grunt
6 work?

7 A. He had the equipment and he had a company that was doing
8 work like that, so he would -- I don't know if he did lining
9 work before, but he was equipped to do that.

10 Q. Right. And in terms of carrying out the provisions and the
11 goals of contract 1368, Mr. Williams did not bring to the table
12 the same things that Mr. Ferguson brought to the table, am I
13 right or wrong?

14 A. No, but we didn't choose Mr. Ferguson.

15 Q. Sir, am I right or wrong about that?

16 A. Sir, we didn't choose Mr. Ferguson. We chose --

17 Q. Sir, am I right or wrong about what I just asked you?
18 Mr. Ferguson had the ability to go out and do the work, he had
19 employees, he had equipment, he had experience, Mr. Williams
20 did not have those three things in terms of doing actual work,
21 am I right or wrong?

22 A. He had experience. He did not have the equipment, and what
23 else did you say?

24 Q. People.

25 A. When you say he didn't have experience --

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1 Q. People.

2 A. No, he didn't have people.

3 **MR. RATAJ:** Thank you. I have nothing further.

4 (10:06 a.m.)

5 **RE CROSS EXAMINATION**

6 **BY MR. GUREWITZ:**

7 Q. Mr. Soave, I believe that just a few moments ago when
8 Mr. Bullotta asked you questions you said that you assumed when
9 you went to see Mayor Kilpatrick at this meeting that you've
10 now been asked about more times than you like, that you assumed
11 that Mayor Kilpatrick was the boss and that's why you went to
12 see him?

13 A. Yes.

14 Q. It is just the view that all of us who live in Detroit
15 believe that the mayor's the boss. That's where the buck
16 stops, right?

17 A. Yes.

18 Q. And, in fact, you know, because you're a real consumer of
19 news about what's happening in the city, that there are a lot
20 of other positions and people, like the city council and the
21 corporation counsel, that have some role in what gets done and
22 when it gets done, isn't that right?

23 A. Yes.

24 Q. And just this exhibit that you've seen before, DIN1-14A,
25 doesn't, in fact, have a place for the mayor to sign on it,

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1 does it?

2 A. Well, I don't know if purchasing is part of the mayor's
3 office.

4 Q. You don't know.

5 A. No, I don't see his -- I don't see a --

6 Q. Okay.

7 A. -- place for the mayor to sign.

8 Q. What you had on your mind at the time you went to see him
9 was that if it wasn't getting done someplace, you thought that
10 maybe he's the guy who could get it moving, right?

11 A. It's like when people come to see me in my company, I don't
12 exactly do those things, but they think I can make it happen, I
13 guess.

14 Q. That's what you thought when you went to see
15 Mayor Kilpatrick?

16 A. I thought there was -- I was told there was a holdup in the
17 mayor's office.

18 Q. And you wanted to get it going and you thought he's the guy
19 who can shake it up if it has to be, right?

20 A. Yes.

21 Q. And just to be clear, if, in fact, purchasing isn't in the,
22 under the mayor's control but relates to the city council,
23 that's just, if that's true, you don't know that, do you?

24 A. I do not know that, no.

25 Q. So that may be the case and it may have, in fact, have been

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1 the case then, that the mayor had nothing to do with
2 controlling the purchasing department and you didn't know it.
3 A. Maybe he has no control over anything, I really don't know.
4 I believe he does, did, so that's what my belief was.

5 Q. In April of 2002, the mayor did not control the finance
6 department, did you know that?

7 A. No, I didn't know that.

8 **MR. BULLOTTA:** I'm going to object. He has no
9 knowledge of this area. He said that --

10 A. No, I don't know.

11 **MR. GUREWITZ:** Well, I asked the question if he knew
12 it.

13 **THE COURT:** Sustained. I mean, he's indicated that
14 he went on the basis of the memo and what he was told from his
15 people. This has been gone over ad nauseam.

16 **MR. GUREWITZ:** That's all I have.

17 **THE COURT:** All right. Done?

18 **MR. BULLOTTA:** None.

19 **THE COURT:** Thank you, Mr. Soave.

20 **THE WITNESS:** And thank you. Thank you, folks.

21 **THE COURT:** You may be excused.

22 **THE WITNESS:** That's it?

23 **THE COURT:** Yes, that's it.

24 **THE WITNESS:** You sure?

25 **THE COURT:** I'm sure.

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(Witness excused at 10:10 a.m.)

THE COURT: Next witness.

MR. CHUTKOW: Government calls Kathleen McCann.

THE COURT: Good morning, Ms. McCann.

THE WITNESS: Good morning, Judge.

THE COURT: How are you?

THE WITNESS: I'm fine, thank you.

THE COURT: I need to swear you in. Would you raise your right hand, please.

KATHLEEN B. MCCANN,

at 10:11 a.m., being first duly sworn by the Court to tell the truth, was examined and testified upon her oath as follows:

THE COURT: Thank you. You may take the stand, please.

DIRECT EXAMINATION

BY MR. CHUTKOW:

Q. Good morning, Ms. McCann.

A. Good morning.

Q. Could you please state and spell your name for the record for the jury.

MR. THOMAS: Your Honor, can we approach?

THE COURT: Sure.

(The following sidebar conference was held:)

MR. THOMAS: Not to be petty, but when I had my law

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1 clerk come into this building, I wanted her to sit behind me,
2 she was told by the marshal service that she couldn't do it.

3 At this point now, not only is the lawyer for
4 Mr. Soave and an unidentified person sitting behind the
5 prosecutor's desk, there's also Mr. Soave. We have a
6 sequestration order. I think that that's --

7 **THE COURT:** He's done, he's been excused.

8 **MR. THOMAS:** He may be, but there has obviously been
9 communication between his lawyer and he relating to this case,
10 and the effect of the sequestration order is subverted to the
11 extent that Mr. Soave now has a chance to listen and talk to
12 Ms. McCann, who he's very close with and who's just recently
13 left his company.

14 **THE COURT:** No, he's been excused, and I don't see
15 anything improper about him sitting here. I can instruct
16 Ms. McCann not to discuss the matter with Mr. Soave.

17 **MR. THOMAS:** And Mr. Soave to do the same.

18 **THE COURT:** And Mr. Soave to do the same.

19 **MR. THOMAS:** I don't necessarily mean that in front
20 of jury.

21 **THE COURT:** No, I'll do that at the break.

22 **MS. VAN DUSEN:** Your Honor, would you consider, I
23 think there's just a little -- it's kind of intimidating that
24 he's right behind the government's table like where the agents
25 sit. I mean, I know it sounds so petty, but I looked over

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1 there, and I have to say I was a little taken aback.

2 **THE COURT:** I'm not going to -- I think to make an
3 issue of it now, I think, would be inappropriate.

4 **MS. VAN DUSEN:** Well, at the break.

5 **THE COURT:** At the break, I'll ask him to move back
6 a row.

7 **MS. VAN DUSEN:** If we took our break now -- I don't
8 mean to be so forward, but if we took our break now, then he
9 could rearrange himself.

10 **THE COURT:** I don't really want to take a break
11 right now.

12 **MS. VAN DUSEN:** Okay. Fine.

13 **BY MR. CHUTKOW:**

14 Q. Ms. McCann, you were about to state your name and spell it
15 for the record.

16 A. Sure. It's Kathleen B. McCann, K-a-t-h-l-e-e-n, B.,
17 M-c-C-a-n-n.

18 Q. Ms. McCann, where do you currently work?

19 A. I currently work for an organization called United Road
20 Services, Inc.

21 Q. What is your title?

22 A. I'm the chief executive officer.

23 Q. The CEO?

24 A. Yes.

25 Q. What is United Road Services?

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1 A. We're a leading finished vehicle logistics provider, which
2 means we move cars throughout the nation.

3 Q. How many employees do you -- work under you?

4 A. Approximately a thousand.

5 Q. And what are your annual revenues?

6 A. Approximately \$300 million.

7 Q. Is United Road connected to Soave Enterprises in any way?

8 A. No.

9 Q. How long have you been working as CEO for United Road?

10 A. I joined the company in January of 2011.

11 Q. And before that, where were you working?

12 A. I was working with Soave Enterprises.

13 Q. What was your title there?

14 A. Senior vice president.

15 Q. And as senior vice president, what were your
16 responsibilities?

17 A. At the time I left the company, I had recently during the
18 past years been responsible for our beer distribution
19 operations, I worked with various corporate initiatives and I
20 also served on the board of directors. Up until 2005, I had
21 responsibility for our industrial services portfolio. At one
22 point I had responsibility for our car dealership group and
23 other companies.

24 **THE COURT:** Ms. McCann, you need to slow down a
25 little bit.

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1 **THE WITNESS:** Oh, sure.

2 **BY MR. CHUTKOW:**

3 Q. We'll break those down. You said the first one was beer
4 distribution?

5 A. Yes.

6 Q. And you were in charge of that division of Soave
7 Enterprises?

8 A. Right. I had responsibility for that group of portfolio
9 companies, so they had on-site management, but I served as the
10 board liaison overseeing the investments.

11 Q. And then you mentioned something else about, was it
12 automotive transport or car dealerships?

13 A. Right. Soave had a group of dealerships in Kansas and
14 Missouri that I had responsibility for for a period of time.

15 Q. And the last one I think you mentioned was industrial
16 services?

17 A. Correct.

18 Q. What does that entail?

19 A. The industrial services group included the Inland
20 companies, MPS Group, and a small sewer and lining company we
21 had called ProLine. Obviously, we sold, I think you've heard,
22 sold that group in 2005 and I remained on the board for some
23 period of time subsequently.

24 Q. Who else was in the management group at Soave Enterprises?

25 A. Well, Tony obviously was the CEO and chairman. I was a

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1 member of a group of five individuals; myself, Mike Piesko, our
2 CFO; Yale Levin who was executive vice president;
3 Mike Hollerbach handled our real estate group; Rick Brockhaus
4 was our treasurer.

5 Q. How long did you work for Soave Enterprises?

6 A. Twenty-one years.

7 Q. Starting when, what year?

8 A. Early 1990, I believe, yes.

9 Q. And before that where were you working?

10 A. I ways CPA with Coopers & Lybrand.

11 Q. That's one of the Big Eight or big, whatever, big nine?

12 A. Right, at the time it was part of the Big Eight, correct,
13 yes.

14 Q. I want to direct your attention to a contract with the
15 Detroit Water and Sewerage Department called 1368. Do you
16 recall that contract?

17 A. I do.

18 Q. And can you tell us approximately when Inland Waters
19 submitted a bid for that?

20 A. It would have been in 2001 sometime.

21 Q. Sometime before, while Dennis Archer was the mayor?

22 A. Correct.

23 Q. And at the time what was your responsibilities as it
24 related to Inland Waters?

25 A. I was a member of the board and, again, the executive

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1 liaison from Soave, so Inland had its own president and
2 leadership team who ran the day-to-day operations, and I would,
3 I would interact with them from a corporate perspective.

4 Q. Now, we've seen some records in this case that there were,
5 in fact, two smaller contracts that were merged together. Do
6 you recall that?

7 A. Yes.

8 Q. Can you just tell us generally what type of contracts those
9 were and why they were merged together from your perspective?

10 A. My recollection is that there were two bids, one for large
11 pipelining and one for smaller pipelining, and Inland bid them
12 both and was the low bidder in both cases, and ultimately, both
13 of those contracts were merged together into one.

14 Q. And when you say pipelining, are you talking about that
15 cured-in-place procedure?

16 A. Indeed, yes.

17 Q. And the only difference between the contracts was what, the
18 width of the pipes that were being lined?

19 A. I think so. It's been a long time since I've looked at the
20 contract, but the large differentiation was that one was a
21 bigger diameter pipe and the other was a smaller diameter pipe.

22 Q. Are you actually involved as the -- I guess you said you
23 were a senior vice president. Would you be involved in putting
24 together the bids, or at what level are you?

25 A. Not typically. That would have been handled by the folks

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1 at Inland. It was obviously a very large bid. Inland at the
2 time was probably a company with 50 million in revenues or so,
3 so this was a very large bid for them, so would have had
4 familiarity that the bid was going in and that folks were
5 comfortable with the pricing.

6 Q. Who at Inland would have been primarily responsible for
7 putting together the bid, if you know?

8 A. Dennis Oszust.

9 Q. And what was his position and title at Inland?

10 A. Senior vice president, I believe, at Inland. He'd been
11 there quite a long time.

12 Q. And do you recall, did Inland put in bids for both of these
13 contracts with the same teams in place, proposed teams?

14 A. My recollection is they did, but I'm not a hundred percent
15 sure.

16 Q. Who were just the main players on these contracts, as you
17 can recall?

18 A. Well, Insituform would be the largest subcontractor. They
19 were a well-known national lining company, cured-in-place pipe
20 lining company that we had done work with for many years at
21 Inland. We also bid with CJ Williams & Associates, and there
22 were a number of other smaller contractors.

23 Q. And what is your understanding as to what happened with the
24 contract after the bids were submitted?

25 A. Well, once we knew the bids had been opened and it had been

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1 determined that we were, Inland was the low bidder, Inland
2 further received notice from the DWSD water board, I believe,
3 that these were the results. Kathleen Leavey at the time, in
4 charge of the water and sewer department, put forth a
5 recommendation that this contract be approved, and then it
6 became stuck.

7 Q. How did you hear about that, how it became stuck?

8 A. Well, at the time, Inland was completing an existing
9 contract with the city, and as they were finishing that work,
10 they started running out of revenues and were paying more and
11 more attention to when that contract was going to be released.
12 So as time went on, there was more urgency and, you know, we
13 would ask more questions, "When is the contract going to come?"
14 So I don't know there was a point in time, but it was an
15 evolutionary process.

16 Q. And this existing contract, was that doing the same sort of
17 work that ultimately 1368 would entail?

18 A. In large part, I believe so.

19 Q. So cured-in-place lining of old sewers?

20 A. Yes.

21 Q. And why was there an urgency to get the 1368 going? Can
22 you explain? Like, was it -- did it have to do with your crews
23 or the equipment, or what?

24 A. Well, yes. I mean, we have, we have a lot of employees
25 that depend on that revenue stream. We have equipment that had

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1 been invested in at Inland that needed to be kept busy, and we
2 would have essentially had to lay off employees had the work
3 not continued subsequent to the end of the existing contract.

4 Q. So in a situation like that, you're making lots of
5 inquiries of the department, the Water and Sewerage Department,
6 or not you but people beneath you, to try to figure out what's,
7 what the holdup is?

8 A. Yeah.

9 **MS. VAN DUSEN:** Objection, Your Honor, that's
10 leading.

11 **BY MR. CHUTKOW:**

12 Q. Well, do you know?

13 **THE COURT:** Overruled. You may answer.

14 A. The employees at Inland would have been making regular
15 inquiries as to the status of the contract.

16 **BY MR. CHUTKOW:**

17 Q. And then reporting back to you?

18 A. With some regularity, yes.

19 Q. Now, you mentioned a CJ Williams. Is that Charlie
20 Williams?

21 A. Indeed.

22 Q. What were the plans for Mr. Williams as it relates to these
23 lining contracts?

24 A. When Inland chose Mr. Williams to be the minority
25 subcontractor, the primary minority subcontractor on this

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1 particular piece of work, there was a lot of excitement about
2 the potential. Clearly, Charlie did not have a big company
3 that was already doing this work. However, he had been the
4 CEO, if you will, of the Detroit Water and Sewer Department,
5 one of the largest departments in the world, let alone the
6 State of Michigan, and there was tremendous opportunity to
7 teach him the other, the game from the other side of the ball
8 and potentially build a national scope minority company in this
9 particular area. So we were very excited about working with
10 Mr. Williams and building a company together.

11 Q. Now, you're a CEO of a large company yourself. Is that
12 something you just learn in a day, how to administer a thousand
13 employees, I guess you'd say you have?

14 A. No, no, certainly it's a -- happens over a number of years.

15 Q. I know the private sector and public sector are different,
16 but from your perspective, is somebody with managerial skills
17 in the public sector somebody that can have the potential to do
18 the same in private sector?

19 A. Oh, very clearly. There was --

20 Q. Now -- I'm sorry.

21 A. There was no question in our mind that Charlie would be a
22 very successful leader of a company doing this type of work.

23 Q. Was Mr. Williams the director of the Water and Sewerage
24 Department for a short period of time, or what was your
25 understanding how long he had been doing that job?

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1 A. As I sit here, I don't recall how many years Charlie was
2 the director of the water and sewer board, but he had a very
3 impressive resumé. He's an attorney, he had done consulting.
4 I think he had other jobs within the City of Detroit that he
5 had proven to be very successful at. We'd had a long
6 relationship with him at Soave and had a lot of confidence in
7 his abilities.

8 Q. You trusted him?

9 A. Very much so.

10 Q. His judgment?

11 A. Yes.

12 Q. And the plan at the time, did Inland Waters have its own
13 lining company that it could do this kind of work, this
14 technical work?

15 A. No, not at that time. We were -- we were using Insituform
16 who had that lining technology and -- to do that portion of the
17 contract.

18 Q. And is that, that specialized lining work, is that where a
19 lot of the revenues come in these, in this type of
20 rehabilitation of sewers?

21 A. Yes. If you were to look at the breakdown of that
22 \$50 million contract, a big portion of it would have been
23 associated with the lining. That was something that Mr. Soave
24 had always wanted us to get into directly, and was part of the
25 future planning.

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1 Q. So given that industrial services was part of your
2 portfolio, was there a significant business interest for your
3 company to try to establish this sort of lining business?

4 A. There was. As I mentioned, we had been encouraged
5 regularly by Mr. Soave to expand into that part of the
6 business. As the years went on, we ended up buying a small
7 sewer lining company called ProLine in order to begin to
8 establish that expertise ourselves.

9 Q. And then was the plan that Mr. Williams would come in, take
10 over that and expand it?

11 A. We knew that eventually we would evolve the overall
12 operation, so that whether it was in the, in project management
13 or in the lining or in the equipment management, whatever the
14 technical needs were, that the minority company we could
15 establish would be capable of really doing this work soup to
16 nuts, so that would be an evolutionary process.

17 Q. And you would provide the equipment and the know-how, and
18 Mr. Williams would provide the managerial expertise?

19 A. Well, we never actually had an opportunity to do that, but
20 the expectation was that Mr. Williams would build up his
21 company, we would provide the mentoring, we would provide the
22 expertise, we would provide, help him build crews since we knew
23 how to bring those types of people into the organization, and
24 that over time there would be the establishment of a company
25 that was able really to do it all.

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1 Q. You said you never had the opportunity to do that. What
2 did you mean by that?

3 A. Well, once the contract got stuck, for lack of a better
4 description, there was -- it became clear that there was a
5 reason why, and Mr. Soave went and met with the mayor and was
6 asked or instructed to replace Mr. Ferguson -- or Mr. Williams
7 with Mr. Ferguson.

8 Q. Now, I'll get to that in a moment.

9 A. Yeah.

10 Q. But I want to still understand what the plans had
11 previously been with Mr. Williams. Where was it envisioned
12 that he would establish his business?

13 A. In Detroit.

14 Q. And at the time were there any minority companies doing
15 this technical type of lining work?

16 A. Not to my knowledge.

17 Q. And then when you said you were going to take it
18 nationally, why did you think that that was a possibility with
19 Mr. Williams?

20 A. Well, the opportunity was pretty, was pretty significant.
21 He had, again, an incredible resumé. He'd led the largest
22 water and sewer department, maybe in the country. He had
23 certainly established credibility for his own name, and Detroit
24 was obviously well-known throughout the nation. There are many
25 large cities that have contract -- that let contracts that

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1 require minority content, and so to have a company in that
2 space, particularly one that was credible, that had technology,
3 that had the experience working with a company like Inland who
4 also had a good reputation, would have been in a position to
5 really take advantage of these opportunities across the
6 country.

7 Q. Now, after, and we'll get to the issues with Mr. Ferguson
8 in a moment, but after replacing Mr. Williams with
9 Mr. Ferguson, did you all just basically wash your hands of
10 Mr. Williams?

11 A. Well, Mr. Williams was talked to and told of the current
12 circumstances. He was disappointed, but we ended up making an
13 economic payment to him to help ease the, you know, ease the
14 hurt of being asked to remove himself from this contract which,
15 you know, he had been an active part of the bidding process
16 with.

17 Q. I'll get to that in a moment, but I'm just talking about
18 going forward in the future, did you guys have continuing
19 business relationships with Mr. Williams?

20 A. Yes, we did, yes, we did.

21 Q. Can you describe that to the jury?

22 A. Sure. An example of one of those relationships is that
23 Soave was an investor in a company called MPS Group, is still
24 today, as a matter of fact.

25 MPS Group is a minority business enterprise.

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1 General Motors had come to us and asked us to invest as a
2 minority -- what I mean, percentage ownership minority, so
3 48 percent of the business -- to help mentor this company in
4 the industrial services space.

5 At the time, Mr. Soave invested in MPS Group,
6 Charlie became a member of the board of directors, and was
7 engaged with us in helping to mentor that company. Further, as
8 time went on, Mr. Williams became an owner of MPS Group and
9 today serves as its CEO and majority owner.

10 Q. And what is his percentage of ownership, do you know?

11 A. I think it's 52 percent.

12 Q. So he's the controlling owner?

13 A. That's right.

14 Q. And he's also an executive of MPS Group?

15 A. I believe he's the CEO.

16 Q. Now, did Soave Enterprises continue to make investments in
17 Mr. Williams' company over the years before he became the CEO
18 in terms of, like, capital investments and things like that?

19 A. Certainly, there was a lot of support from a number of
20 different angles. I don't remember the exact dollar amounts.

21 The company, when we originally invested, was doing
22 about \$6 million of revenue per year; ultimately, before the
23 automotive meltdown, grew to \$55 million a year in revenue, and
24 today they're somewhere, I understand, in the \$40 million
25 range. So there's been a continued capital support as well as

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1 other mentoring support for this business.

2 Q. And Soave Enterprises still has some component of ownership
3 interest in the company?

4 A. Yes, I believe it's the other 48 percent.

5 **THE COURT:** Let's take a 20-minute break.

6 (Jury out 10:33 a.m.)

7 (Recess taken 10:33 a.m. until 10:55 a.m.)

8 (Jury in 10:56 a.m.)

9 **THE COURT:** Be seated. Proceed.

10 **MR. CHUTKOW:** Thank you, Your Honor.

11 **BY MR. CHUTKOW:**

12 Q. Ms. McCann, you mentioned briefly that there had been --
13 that you understood that there had been a holdup in this 1368
14 contract, and what did you do with that information? Did you
15 let Mr. Soave know that?

16 A. Either Dennis Oszust or I would have let him know, yes.

17 Q. And then at some point in time, did --

18 **THE COURT:** Wait, wait.

19 **A JUROR:** Can you bring up your voice? We can hear
20 her fine. We just can't hear you.

21 **MR. CHUTKOW:** Okay. I'll lean forward. Let me know
22 if I'm not talking loud enough.

23 **BY MR. CHUTKOW:**

24 Q. Now, at this point, was this of some concern -- what period
25 of time are we talking about here where you started having

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1 concerns about this holdup?

2 A. It would have been the spring of 2002, so within months of
3 the contract decision being made.

4 Q. And you had been managing this industrial services
5 portfolio for some time at this point?

6 A. Well, I had been the assigned executive for maybe a couple
7 years, would be the appropriate timeframe.

8 Q. Had you had any other city contracts of this magnitude held
9 up before?

10 A. Not to my knowledge, no.

11 Q. And where was your understanding where the holdup was?

12 A. Our understanding was the holdup was in the mayor's office.

13 Q. And did you know how the mayor related to the city council,
14 like what the -- what the steps in the process were?

15 A. I may have had a better understanding back then than I do
16 today, but certainly the folks at Inland would have known all
17 those steps.

18 Q. Okay. And they were advising you about that?

19 A. Correct.

20 Q. And then at some point, did Mr. Soave go and see the mayor?
21 Did he tell you that he did?

22 A. Yes.

23 Q. And when he came back, what did he tell you?

24 **MS. VAN DUSEN:** Your Honor, I would object on the
25 grounds of hearsay.

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1 **MR. CHUTKOW:** It goes to the state of mind.

2 **MS. VAN DUSEN:** Could we have a sidebar, please?

3 **THE COURT:** Yes.

4 (The following sidebar conference was held:)

5 **MS. VAN DUSEN:** Your Honor, the reason I'm objecting
6 is I think this fits within the hearsay objection. I'm sure
7 that Mr. Chutkow is going to speak in terms of the climate of
8 fear. If they want to talk about the climate of fear, him
9 coming back and advising her what the mayor told him, which
10 was, "Use Ferguson," has nothing to do with the creation of a
11 climate of fear, so, and that's why, most respectfully, I don't
12 believe that it fits within the exception and certainly not
13 within the cases, as I understand them in the Sixth Circuit,
14 regarding the hearsay exception in the climate of fear.

15 **MR. CHUTKOW:** This is so within the wheelhouse of
16 Collins, I don't even know what to say. These --

17 **THE COURT:** I think it is, too. Overruled.

18 **MS. VAN DUSEN:** Okay.

19 (End of discussion at sidebar.)

20 **BY MR. CHUTKOW:**

21 Q. What did Mr. Soave tell you about his meeting with the
22 mayor regarding the holdup of the contract?

23 A. Just the essential message was that Williams was out and
24 Ferguson was in.

25 Q. He told you that the mayor had told him, Mr. Soave, that?

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1 A. Not in those exact words, but yes.

2 Q. Now, at that time, did you know who Mr. Ferguson was?

3 A. No, I did not.

4 Q. And did you investigate to determine who he was?

5 A. I don't recall doing a deep investigation. I know that we
6 asked the folks at Inland if they were familiar with him and
7 they had -- they were indeed.

8 Q. Did you have any discussions with Mr. Williams to break the
9 news to him that he had been replaced?

10 A. Yes.

11 Q. What was his reaction?

12 **MR. GUREWITZ:** Objection, Your Honor.

13 **MS. VAN DUSEN:** Your Honor --

14 **MR. GUREWITZ:** Hearsay.

15 **MS. VAN DUSEN:** Clearly calling for hearsay.

16 **THE COURT:** What was -- you can describe how he
17 acted. Don't repeat what he said. You can just describe his
18 reaction without articulating any specific words that he said.

19 A. Mr. Williams was very disappointed.

20 **BY MR. CHUTKOW:**

21 Q. Now, at some point, did you have a meeting with
22 Mr. Ferguson?

23 A. Yes.

24 Q. About when did that occur?

25 A. It was later in the spring of 2002.

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1 Q. And what prompted you to go see him? Did someone instruct
2 you to do that?

3 A. Mr. Soave instructed Yale Levin and I to go visit with
4 Mr. Ferguson.

5 Q. And you mentioned Yale Levin before. Who is he?

6 A. He's an executive vice president with Soave.

7 Q. And you went to where, to Mr. Ferguson's offices?

8 A. Yes, we went to his office on Wyoming.

9 Q. Just the three of you, then, Mr. Levin, you and
10 Mr. Ferguson?

11 A. That's right.

12 Q. And tell us about your discussions with him.

13 A. It was an initial introduction, so we told each other about
14 our backgrounds, our companies. As I recall, Mr. Ferguson told
15 us about his family history and ownership of the business, the
16 types of work that he had done. We shared with him our
17 experience, the various businesses that Soave was in, our
18 previous experience in mentoring minority companies, et cetera.

19 Q. And what was -- did he tell you what it was that he could
20 do for your company?

21 A. Well, Mr. Ferguson clearly had a company with yellow iron.
22 He had done contracts in the City of Detroit, and for not just
23 the city, but for other folks, so he made clear that he had
24 contracting expertise and the like. As it relates to what he
25 would specifically do on this contract, I don't recall that he

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1 specifically said what he would do on this contract.

2 Q. Did he have a -- did it appear to you that he had a focus
3 in what he wanted to talk about?

4 A. One of the focuses was how much money he would make on the
5 contract.

6 Q. And specifically what was he saying in regards to that?

7 A. My recollection is that he was interested in realizing a
8 material portion of the profits from the contract, and
9 3~percent was his target.

10 Q. He wanted 3~percent of the entire contract?

11 A. It wasn't completely clear to me during the course of our
12 conversation what he meant. Yale believed that he meant he
13 wanted 3~percent of the profits --

14 **MS. VAN DUSEN:** Your Honor, I would object.

15 A. -- on the entire contract.

16 **THE COURT:** Wait, wait.

17 **THE WITNESS:** Sorry.

18 **MS. VAN DUSEN:** Yes, I would object to Ms. McCann
19 recounting what Mr. Levin told her.

20 **MR. CHUTKOW:** It goes to their decision-making
21 process later, Your Honor.

22 **THE COURT:** No, I sustain the objection.

23 **BY MR. CHUTKOW:**

24 Q. Now, when -- but 3~percent, from your understanding, did
25 that just cover 3~percent of the work that he would, do or a

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1 broader amount?

2 A. It was confusing to me, to be honest. The focus on profit
3 as opposed to how much revenue I will do under the contract was
4 unusual, so there was not a lot of diving into detail during
5 this initial conversation.

6 Q. Why was it unusual to you that Mr. Ferguson was focusing on
7 the profits he would receive rather than the revenues?

8 A. Most contractors focus on the top line and internally
9 determine how much profit they're going to make based on the
10 efforts that they provide for that revenue.

11 Q. And, but that wasn't what he was expressing to you in this
12 conversation.

13 A. That's not my recollection.

14 Q. Now, 3-percent profit on a \$50 million contract is what?

15 A. A million and-a-half dollars.

16 Q. Now, did you talk to him about areas that you thought that
17 he could assist your company?

18 A. Whether it was in that meeting or subsequent meetings, we
19 talked about various opportunities. Dig-up support, material
20 support, equipment support, lining support by providing labor
21 and crews, so there were a number of different ways that
22 Mr. Ferguson's company could have contributed to the contract.

23 Q. And when you would discuss these things, these
24 opportunities, at least early on in your conversations, what
25 was his reaction?

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1 A. Well, it was luke warm, might be the right way to describe
2 it. It took us a long time to get to the finish line of what
3 exactly the work was going to be, how it would be papered, and
4 how it would be executed. So there were a number of
5 discussions that the folks at Inland had, and subsequently that
6 I had as well, to try and get us to that point of how the
7 20 percent minority content target was going to be met with
8 Ferguson Enterprises.

9 Q. Did you perceive that he was being helpful in that process?
10 Did he explain to you what he could do?

11 A. I wouldn't describe it as helpful, no.

12 Q. How would you describe it?

13 A. Difficult.

14 Q. Now, he didn't help you on your bid in any way, did he?

15 A. No, he did not.

16 Q. Did it -- because of that, did it surprise you that he
17 wanted 3~percent of the profits?

18 A. I did not understand the 3~percent to -- I really didn't
19 understand the 3~percent. It was a, kind of a nonsensical
20 focus, for me a little slow on the uptake, I guess. But
21 ultimately, we knew that there was work that we could have him
22 do. We focused on that.

23 Q. Now, you've dealt with lots of contractors and
24 subcontractors in negotiations, have you not?

25 A. Yes.

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1 Q. Is it typically in that situation where, if you're the
2 prime, you're the customer, so to speak?

3 A. Yes.

4 Q. Did you feel like in your --

5 **MS. VAN DUSEN:** Your Honor --

6 **THE COURT:** Are you going to object?

7 **MS. VAN DUSEN:** No.

8 **BY MR. CHUTKOW:**

9 Q. Did you feel in this situation when you met with
10 Mr. Ferguson on this first encounter that he was treating you
11 like the customer?

12 A. No, no, we didn't.

13 Q. And why not?

14 A. Normally, when you have an opportunity for a subcontractor
15 to do \$10 million of work with you, they will be very
16 aggressive in trying to get to the finish line, "Get the
17 contract signed, put me to work, here's what I can do," and
18 quickly reconcile issues that are in the way so you can get to
19 work.

20 This was not that type of circumstance at all.

21 Q. How did you perceive his attitude in these initial
22 meetings?

23 A. Again, difficult. There was a substance-over-form issue.
24 There could be conversation that he was interested in getting
25 to work, but the actual movement on getting contracts to the

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1 appropriate place would take a very long time, so that happened
2 repeatedly, not just with me, but with the folks at Inland.

3 Q. Given that kind of attitude and the fact that you described
4 yourself as the customer, why didn't you just tell him, "We can
5 go find somebody else"?

6 **MS. VAN DUSEN:** Your Honor, it's an entirely
7 hypothetical question which I think is improper and not based
8 on the facts.

9 **THE COURT:** Overruled. You may answer.

10 A. We were essentially in a forced marriage, and we knew that
11 this was a relationship that we were going to have to endure,
12 and so we did our very best to ultimately get to these
13 contractual arrangements in order to satisfy the promise we
14 made to the City of Detroit to do this work under the DWSD
15 contract.

16 **BY MR. CHUTKOW:**

17 Q. When you say "forced marriage," who did you perceive was
18 forcing you to be in this marriage?

19 A. Well, Mr. Ferguson's company had been chosen by
20 Mayor Kilpatrick as our subcontractor.

21 **MR. CHUTKOW:** Your Honor, if I may, I apologize for
22 this, may I have a brief sidebar on an issue that's just about
23 to come up?

24 **THE COURT:** Yes.

25 (The following sidebar conference was held:)

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1 **MR. CHUTKOW:** This is going to be very brief, and
2 when she was in this meeting with Mr. Levin, as they left, she
3 was very confused about why Mr. Ferguson was behaving the way
4 he was and why he wasn't being helpful, and she had a
5 conversation with Mr. Levin, and he said, "The guy wants money
6 for nothing, he wants to -- basically for no work," and they
7 used that, they had the discussions with Mr. Soave and that was
8 the basis for which all of their future discussions with
9 Ferguson, which is going to all come out, that they kept on
10 trying to press him to do work because they didn't believe that
11 he wanted to do it. And without me being able to articulate
12 that, a lot of what comes is going to seem nonsensical, so
13 it's, and Mr. Levin is going to be here to testify to the same
14 issue.

15 **MS. VAN DUSEN:** Fine. Then --

16 **THE COURT:** Yeah.

17 **MS. VAN DUSEN:** -- he can testify that that's what
18 he told her.

19 **THE COURT:** I don't think she can testify to what he
20 said about that. He is going to be here?

21 **MS. VAN DUSEN:** Next witness, Your Honor.

22 **THE COURT:** Next witness?

23 **MS. VAN DUSEN:** Well, I don't mean to -- assuming
24 he's available, but on our list, he's the next.

25 **THE COURT:** Okay.

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(End of discussion at sidebar.)

BY MR. CHUTKOW:

Q. Ms. McCann, I now want to ask you about a Mackinac Island policy conference which occurred in early June of 2002. Do you recall that?

A. I do.

Q. And did you actually attend that meeting?

A. I did.

Q. While you were up there in Mackinac, did you meet with Mr. Ferguson again?

A. Yes.

Q. And what discussions did you have with him at that time?

A. It was again around the breakdown of the contract and what his potential performance under the contract might be and for what dollar amounts.

Q. What was his focus at these meetings?

A. It was general conversation around what it would be, whether it was, whether it was going to be crew support, equipment support, dig-up support, et cetera.

Q. Did you come to a rough understanding of allocation of work at that point?

A. I believe we did, yeah.

Q. And just roughly what was it that you recall saying that he could do for the company?

A. Well, there were -- the contract is broke down into some

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1 primary components; cleaning and TV-ing and lining and then
2 dig-ups, and so we had identified a percentage of the dig-up
3 work that would be targeted for him to do and then looked to
4 the balance of work and said that we'll figure out crews,
5 equipment, whatever the case may be, materials, in order to
6 meet the remaining amount of the \$10 million target.

7 Q. The target that you had originally allocated to
8 Mr. Williams?

9 A. That's right.

10 Q. Now, when you say dig-up, what does that mean?

11 A. I'm not a technical expert on this, but oftentimes in sewer
12 work you'll have to go in with heavy equipment and dig out dirt
13 around pipes and do that type of thing, so we would have
14 cured-in-place pipe lining, but you may also have to go in and
15 dig up the earth and excavate and do some particular work
16 underground.

17 Q. I want to show you what's been marked as Exhibit IN1-1A.

18 **THE COURT:** Are you --

19 **MR. CHUTKOW:** I'll move to admit it.

20 **THE COURT:** Received.

21 (Government's Exhibit IN1-1A received into
22 evidence.)

23 **BY MR. CHUTKOW:**

24 Q. If you can look up at the screen here and tell us what
25 we're looking at here.

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1 A. This looks like a memo from the -- or to the DWSD from
2 Dennis Oszust, our vice president at Inland, regarding 1362 and
3 1368 contracts.

4 Q. And if we could go down to the various consultants and
5 subconsultants. Do you see the --

6 **A JUROR:** Would you please go back to the top and
7 slow down a little bit, please.

8 **BY MR. CHUTKOW:**

9 Q. The date of this is again?

10 A. December 4, 2001.

11 Q. And if we can go down to the list of consultants and
12 subconsultants, what does IWPC stand for?

13 A. Inland Waters Pollution Control.

14 Q. And then DBE stands for?

15 A. I think Detroit-based enterprise.

16 Q. And percentage of the contract is 35 percent?

17 A. Correct.

18 Q. And then the next subconsultant is what?

19 A. Insituform.

20 Q. And what was their percentage?

21 A. 30 percent.

22 Q. They were going to do the specialized lining of the pipes?

23 A. Correct.

24 Q. And then CJ Williams is also listed?

25 A. That's correct.

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1 Q. And what is his percentage?

2 A. 20 percent.

3 Q. Now, it was your testimony that he was going to then be
4 working with you and Insituform to develop an expertise in the
5 lining area?

6 A. Right. The lining, project management, et cetera. TV,
7 cleaning, the whole thing. We intended to really have Charlie
8 learn the business from the other side.

9 Q. Then we, at the bottom, have listed Willie McCormick,
10 L D'Agostini & Sons and Superior Construction, do you see that?

11 A. Yes.

12 Q. Were these going to be your excavators for the project?

13 A. That's likely true, but I didn't know these firms. Inland
14 folks would know that better.

15 Q. And they were all Detroit-based enterprises?

16 A. Correct.

17 Q. If Mr. Ferguson was going to be doing this excavation work,
18 do you know if he was going to be displacing your other
19 existing, some of the work from your existing excavators?

20 A. I don't know really.

21 Q. And that would be something for someone else to answer?

22 A. Yes.

23 Q. Now, when you were at this policy conference, did you have
24 any meetings with members of the mayor's office or encounters
25 with members of the mayor's office?

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1 A. I had encounters. There are a number of events at the
2 island over this three-day conference, so it's not uncommon to
3 run into people.

4 Q. What about a gentleman by the name of Derrick Miller?

5 A. I probably ran into Derrick a few different times. One
6 particular time was at an event at one of the island's hotels
7 that was a celebratory event. I don't remember the exact
8 reason for the event, but there were a number of folks
9 including the mayor there. Pretty packed room.

10 Q. Was Mr. Ferguson there, too?

11 A. Yes.

12 Q. And Derrick Miller, do you know what his position was at
13 that time with the city?

14 A. I don't recall. Chief of staff or -- maybe. I don't
15 recall his title.

16 Q. Someone within the mayor's cabinet?

17 A. That's right, yes.

18 Q. And then what happened when you met him at this party with
19 the mayor?

20 A. He asked me how our negotiations were going with Ferguson.

21 Q. Did you bring that up, or did he?

22 A. He brought it up.

23 Q. And how did you feel about that?

24 A. I was uncomfortable. This was a very public setting.

25 There were great sensitivities that we had as a company. The

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1 contract was not done, our numbers had been on the street for
2 some time. We were concerned about the fact that Mr. Williams
3 had been replaced by another contractor and that our
4 competitors could use this as an excuse to protest and ask for
5 the contract to be rebid.

6 I didn't, I didn't -- while it was not a lengthy
7 conversation, it didn't seem appropriate to me to be asked the
8 question from someone in the administration as to where our
9 negotiations stood.

10 Q. In your experience, you know, doing industrial services,
11 had you had other cabinet level officials come to you and ask
12 you about how your negotiations are going with a subcontractor?

13 A. This was the first time I'd experienced that.

14 Q. Now, you said that you had concern because your numbers
15 were on the street. What did you mean by that?

16 A. Well, we had bid this contract in the end of 2001, and the,
17 the results had been published that Inland had indeed ended up
18 as the low bidder on both the small diameter pipe contract and
19 the large diameter pipe contract, and so those results had been
20 published, and it was well-known that the Inland bid was 15 to
21 40 percent less than the next bidder.

22 So to the extent that we now had a change in the
23 participants in the bid, and there was a -- there were still
24 competitors out there who wanted this work, it would have been
25 an easy opportunity to protest and suggest a rebid. So we were

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1 very nervous about losing this opportunity based on the delays,
2 and to have these conversations in a public setting like this
3 seemed inappropriate and was an anxiety increasing moment.

4 Q. Did you actually record what had happened shortly
5 thereafter?

6 A. Well, I took some notes of some of the thoughts that I'd
7 had at the conference, and once the meeting was done and I'd
8 gotten back to my phone, reached out to Mr. Soave and Mr. Levin
9 and had a conversation with them about my concerns at the
10 conference.

11 Q. Now, what is the competitive disadvantage for you to have
12 your pricing information out on the street?

13 A. If a competitor was successful in suggesting that a
14 contract be rebid, the numbers that Inland had worked up and
15 put in under, you know, sealed bid have now been opened and are
16 available for the public and our competitors to see. For the
17 contract to be rebid, we would have been at a distinct
18 disadvantage as our numbers were public.

19 Q. So can you explain to us just what this means, a sealed
20 bid, what happens and what's the purpose?

21 A. Well, it's really to ensure appropriate levels of
22 competition and that the community is spending its money in the
23 most prudent way, so it's not uncommon for municipalities,
24 indeed for for-profit companies, to go out for bids and ask
25 folks to submit sealed bids and do so in that type of setting

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1 so the bids are -- however they administratively deal with it
2 inside the department, I don't know, but obviously they open
3 all the bids and they rank the various bids that have been
4 submitted based on the criteria that they use to judge their
5 appropriateness for the city.

6 Q. And the fact that a cabinet level official had approached
7 you about your negotiations with Mr. Ferguson, did that concern
8 you as, that there was undue influence? What was your concern?

9 **MS. VAN DUSEN:** Your Honor, objection to the leading
10 nature.

11 **THE COURT:** Yeah, let's just take the question, what
12 was your concern, the question as originally phrased. What was
13 your concern?

14 A. My concern was that our contract was not yet done, and to
15 the extent that a member of the cabinet was asking me how the
16 negotiations were going with Mr. Ferguson, not only in a public
17 setting but paying that close of attention, it let me know
18 again that these negotiations needed to be completed before the
19 contract was let.

20 **BY MR. CHUTKOW:**

21 Q. While you were at the policy conference, did you run into
22 the mayor of Detroit?

23 A. Yes.

24 Q. And did you have any conversations with him about
25 Mr. Ferguson?

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1 A. The mayor is very friendly, and just a passing conversation
2 on the way out that, you know, Bobby was a good guy and we
3 said -- you know, I told him that we were working on it, and he
4 said, "I know you are."

5 Q. "We are working on it," meaning what?

6 A. We'll figure this out.

7 Q. Figure what out?

8 A. We'll figure out how to identify \$10 million worth of
9 revenue for Mr. Ferguson to do on this job, was my intention.

10 Q. Were you comfortable talking with the mayor about this at
11 all?

12 A. It wasn't a long conversation so ...

13 Q. Now, you mentioned that Insituform was your specialized
14 lining company. Did you have any meetings with them to try to
15 figure out how to fit Mr. Ferguson into your project?

16 A. Yes, we did. We had a number of conversations with them
17 around lining support, materials management, equipment. Most
18 of these conversations were had by the Inland staff directly.

19 Q. And who would that be?

20 A. Dennis Oszust and his team.

21 Q. Did you ever have any direct meetings with the executives
22 at Insituform about this?

23 A. On occasion, yes.

24 Q. Who in particular at Insituform would you have talked to?

25 A. I had a meeting that I recall, or email exchange with John

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1 Marich, who was, I think, a regional executive for Insituform,
2 and also Tim Tousignant, another regional VP. I think, I don't
3 remember, one or the other succeeded each other, so --

4 Q. Did you come to a rough understanding with Insituform as to
5 how you were going to fit Mr. Ferguson in on your project?

6 A. The Inland folks, Dennis and his team, did work out those
7 details with Insituform.

8 Q. And do you know what the general parameters were in terms
9 of profit sharing or anything like that?

10 A. Well, the ultimate goal was to ensure that Ferguson
11 Enterprises did work, to the extent that they were going to
12 earn reasonable profits on that work, everybody was fine with
13 that, so there was a review of the types of work that could be
14 done, and then a desire to work out how many crews it would
15 take, how much labor, how much equipment, et cetera, that would
16 allow for those targets, for both revenue and profit to be
17 reached.

18 Q. Were there any specific discussions with Mr. Ferguson about
19 point repair work and whether that would be a separate profit
20 item for him?

21 A. I don't recall specific questions around point repair work.

22 Q. Did you ever have discussions with Mr. Ferguson about the
23 need for him to actually do work for the profits that he
24 wanted?

25 A. Yes. I mean, that was common sense. We pay subcontractors

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1 to work on contracts.

2 Q. But was that something that you felt you had to press with
3 him?

4 A. Well, it was interesting. The actions speak louder than
5 words, and to the extent that ultimately the contract started
6 and we still had not gotten to a point where we had negotiated
7 contracts with Ferguson Enterprises, we were wondering really
8 how serious they were about really doing work on this contract.

9 Q. And what about Insituform, were you able to come to an
10 agreement with them about what their scope of work was?

11 A. Yes, Insituform's subcontract with Inland was signed
12 shortly after our contract being released by the City of
13 Detroit.

14 Q. And was the difficulties coming to an agreement with
15 Mr. Ferguson having -- causing you concern at all as the
16 contract -- or as the project moved forward?

17 A. We had a very large concern that we were going to be unable
18 to meet the minority requirement as promised to the City of
19 Detroit. The contract had started, and Inland has begun to
20 recognize revenues, they were working very quickly under the
21 contract, there were a lot of tasks being released, and we
22 still did not have meaningful work from Ferguson Enterprises
23 because basic contracts had not been negotiated fully and
24 signed.

25 Q. And did that become an area of focus for you, to try to get

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1 this contract done with Mr. Ferguson?

2 A. Yes.

3 Q. And did you work directly with him on that?

4 A. Most of the work really was directly between Inland, Dennis
5 Oszust, their attorney, and Ferguson Enterprises. From time to
6 time, I would interject myself to try and turn up the heat and
7 get everybody to the finish line.

8 Q. Now, what ultimately -- did you guys come to some agreement
9 with him as to how he was going to get his profits and what
10 type of work he would do?

11 A. Ultimately, there was a labor lease agreement signed with
12 Insituform and a materials management agreement signed with
13 Insituform.

14 Q. And what does that mean? Can you describe those two things
15 just generally?

16 A. Yeah, the labor lease agreement, as I understand it, was
17 really for Ferguson to provide crews, so labor at the job site
18 to help with the installation of the lining. And then from a
19 materials management perspective, this was acquiring the
20 various materials, I think resins and liners and whatever the
21 case may be, and helping to manage logistics and those types of
22 things.

23 Q. In your own interactions with Mr. Ferguson on these
24 negotiations, did he appear to be reasonable to you from, you
25 know, your experience in doing these kinds of things?

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1 A. The difficulty -- there was more difficulty than we have
2 typically experienced with subcontractors. There was an
3 express desire to do work, but there was an unwillingness to
4 accept financial risk or insurance risk or those types of
5 things.

6 There were specific requirements in the city
7 contracts that we really had to have in our subcontract
8 agreements, and whether or not the city required them, our
9 internal policies required them, and many of those clauses and
10 particular risk mitigation measures proved very difficult to
11 get over the threshold with Mr. Ferguson. Ultimately, I think
12 it was in early 2003, those contracts were indeed signed.

13 Q. And this assumption of risk, I mean, he was getting a
14 percentage of your profits from the entire project, is that
15 right?

16 A. Well, he was, he was slated to earn profit on the work that
17 he performed on the contract. The challenge was we couldn't
18 give him revenue until he had the signed contracts.

19 Q. And in your experience, when somebody shares in profits, do
20 they also put forward some, also sharing in the risk of the
21 project?

22 A. Oh, absolutely, no profit without risk, for sure.

23 Q. Now, did Mr. Ferguson have a specialized lining company to
24 do this cured-in-place procedure that you were going to be
25 doing on this contract?

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1 A. No, he did not.

2 Q. Did he -- did you extend any offers to help to mentor him
3 so that he could develop some of those skills?

4 A. Yes, we did.

5 Q. And what was his reaction?

6 A. He was not interested in mentoring.

7 Q. Did that prove to be a problem for you in terms of finding
8 work for him?

9 A. Well, this question would be, I think, well posed to the
10 folks at Inland. From my perspective, there were continued
11 difficulties in trying to figure out how to get him to do work
12 without some coordination and some support.

13 Ultimately, on the labor leasing contract, I know
14 that Insituform helped him to build some crews, for instance.

15 Q. Now, you mentioned earlier that the intention was to get
16 Charlie Williams involved in some of this specialized lining
17 work from an administrative perspective and to grow it
18 nationally. From your discussions with Mr. Williams, did he
19 seem willing to be mentored, to develop this kind of company
20 that you envisioned?

21 A. Mr. Williams was very enthusiastic about coming into an
22 opportunity to work with the Soave companies. He obviously
23 understood this business from an administrative perspective
24 based on his historical experience. To learn it from the other
25 side and to build a minority company that had this specialized

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1 activity was, I think, very appealing to him, whether it was in
2 Detroit or national.

3 Q. Eventually, you were able to enter into a contract with
4 Mr. Ferguson?

5 A. Yes.

6 Q. But it was delayed after you had already entered into your
7 agreements with the other companies then?

8 A. The Insituform subcontract was, I believe, executed before
9 the two Ferguson contracts were executed with Insituform. I
10 don't know the exact date that Inland did the dig-up contract
11 with Mr. Ferguson.

12 Q. Once Mr. Ferguson's company actually started doing work,
13 were there problems?

14 A. As communicated to me, there were --

15 **MS. VAN DUSEN:** Your Honor, I have to object here.

16 **MR. CHUTKOW:** She can only take action based on what
17 she -- is communicated to her, so it's not for the truth.

18 **THE COURT:** Well, no, I don't -- I mean, I think
19 I'll have to sustain this objection. She can testify with
20 respect to her own knowledge of any problems that existed, but
21 if someone told her about problems, that's not admissible.

22 **BY MR. CHUTKOW:**

23 Q. Did you have to take any sort of action based on issues
24 with Mr. Ferguson's work performance?

25 A. There were a number of challenges that occurred over time.

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1 One particular incident is we received a stop-work order from
2 the City of Detroit at Inland, and it essentially said, "Do not
3 provide your subcontractor any additional work until he
4 corrects the work that is either behind or deficient."

5 So we had to, we had to work with him in order to
6 get that caught up. There were a number of circumstances where
7 billings were inappropriate, either in error or too high, that
8 needed to be corrected. There were any number of things that
9 the folks on the team working with him had to deal with.

10 Q. I'm going to show you what's been marked as IN1-31.

11 **MR. CHUTKOW:** Well, I'll move to admit it first.

12 **THE COURT:** IN1-31?

13 **MR. CHUTKOW:** Correct.

14 **THE COURT:** Received.

15 (Government's Exhibit IN1-31 received into
16 evidence.)

17 **MR. CHUTKOW:** We can put it on the screen.

18 **BY MR. CHUTKOW:**

19 Q. Is this the stop-work order that you were describing?

20 A. Yes, it is.

21 Q. And it's kind of hard to read, so do you mind giving it a
22 shot to tell us what it exactly says from the top up there?

23 A. I'm not sure what the first word is, but it might be "avoid
24 verbal order."

25 Q. Tell what you, I'll read it since I have a better copy, and

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1 tell me if I've got it right.

2 A. All right. Great.

3 Q. "Avoid verbal order, August 19, 2004." Do you see that?

4 A. Yes.

5 Q. And then it says, "To: Dennis Oszust"?

6 A. Yes.

7 Q. That again is someone at Inland?

8 A. Yes.

9 Q. And then it says, "Be advised that spot sewer repair work
10 performed by Ferguson Construction Company, contracted by
11 Inland Waters Pollution Control, be stopped until the issues of
12 restoration for the attached job work sites be resolved."

13 Do you see that?

14 A. Yes.

15 Q. And then it's signed out, "Ronald Holloway, Principal
16 Construction Inspector, Detroit Water and Sewerage."

17 Do you see that?

18 A. Yes.

19 Q. And then on Page 2 on the very top it says, "Deficiency
20 list, August 2004, sewer spot repairs."

21 Do you see that?

22 A. Yes.

23 Q. And then there's just a list of different locations, is
24 that correct?

25 A. Correct.

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1 Q. Now, is this the stop-work order that was one of the
2 examples of concern to you?

3 A. Yes.

4 Q. What does restoration work mean? What is that?

5 A. Again, I typically would not deal with this level of
6 detail, but my general understanding is that restoration work
7 is once dig-ups have been done or lining has been done and the
8 soil and land has been disturbed that you go back in and make
9 things new for the homeowners or the community where the work
10 was done.

11 Q. So they have a sidewalk and curbs and no holes, and things
12 like that?

13 A. They restore things to their prior existence.

14 Q. Now, did you have to have meetings with Mr. Ferguson about
15 these performance issues?

16 A. I didn't have a meeting with him on this right as it
17 happened. We had a subsequent conversation around this.

18 Q. Did Mr. Ferguson ever tell you -- what was his reaction
19 when you did have a conversation with him about it?

20 A. Well, he was upset that he was unfairly blamed for this
21 type of activity. It was not uncommon for people to have
22 complaints once their homes had been disturbed in some way or
23 another, and so he felt he was being a scapegoat.

24 Q. Did he ever make mention to you about his role in the
25 contracts that you had received from the water department?

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1 A. Mr. Ferguson took credit for the contracts that Inland had
2 with the Detroit Water and Sewer Department, even 1368, the
3 \$50 million contract that we had won through the bidding
4 process.

5 Q. And he had not been on the bid?

6 A. He had not.

7 Q. Did he explain how he should receive credit for getting you
8 that contract?

9 A. His theme was he was disrespected, we did not give him the
10 credit that he deserved for us having this contract, that he
11 could have done this work with anyone and chose to do it with
12 us. That was a recurrent theme.

13 Q. Even though your company was the one that had won the
14 contract?

15 A. Yes.

16 Q. Did he ever take credit for amendments to the contracts
17 that you received?

18 A. Thematically, yes. 15 Mile Road was a big sinkhole that
19 Inland came in and was the emergency contractor on, and he took
20 the responsibility for that, saying that we were there only
21 because of him.

22 Q. Did you take any sort of diary notes or keep any sort of
23 records of your interactions with Mr. Ferguson?

24 A. I did. I kept some records of conversations and
25 memorialized in longer form longer conversations.

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1 Q. And did you encourage anyone else that interacted with him
2 to also do the same?

3 A. Yes. The folks at Inland that interacted with Ferguson
4 Enterprises were instructed to memorialize their conversations,
5 take good notes, make sure that they stayed within the
6 guardrails, but we had a sense that some day we were going to
7 be telling the story and thought it important to, to have a
8 documentation.

9 Q. What did you mean that some day you'd be telling the story?

10 A. Well, there were a couple of concerns. Firstly, to the
11 extent that there were these ongoing, sometimes direct,
12 sometimes veiled threats, we knew that the risk of losing the
13 work kind of was hanging over our heads.

14 Furthermore, at the beginning, when we had gotten so
15 far down the road into the 1368 contract with no minority
16 content to speak of, we were wondering whether or not we were
17 intentionally being crippled, and so the contract could be
18 taken away and given to someone else since we clearly weren't
19 doing whatever needed to be done on Ferguson's terms.

20 So it was a combination of things. It's like
21 breathing the air where there was a constant threat, again
22 veiled and sometimes direct, around our contractual
23 relationship, so we tended to take notes.

24 Q. What did you mean by "stay within the guardrails"?

25 A. There was a strong message throughout our organization that

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1 we wanted to make sure that, at the end of the day, whatever
2 happened with Mr. Ferguson, we didn't know, we didn't know all
3 the back stories that are now quite public, that we didn't find
4 ourselves or our company tainted by that, so our folks were
5 instructed, make sure that Mr. Ferguson works for any of the
6 work that he's -- or any of the monies that he earns, and if it
7 takes us \$20 million into our contract before we can give him
8 any meaningful work, so be it. So we weren't -- what the
9 message to the people was, in staying inside the guardrails, is
10 don't pay for anything that has not been earned.

11 Q. No no-show payments?

12 A. No.

13 Q. Was that something that you were concerned that
14 Mr. Ferguson was looking for?

15 **MS. VAN DUSEN:** Your Honor, I will object to this as
16 leading.

17 **THE COURT:** Sustained.

18 **BY MR. CHUTKOW:**

19 Q. Is this something that you normally do as part of your
20 business practice, kind of keeping a log of your interactions
21 with a subcontractor?

22 A. Well, I typically at this level wouldn't have had as much
23 interaction. This was a particularly difficult circumstance,
24 so I stayed closer to it than I would otherwise have for this
25 company. But I will confess to being a general note-taker, but

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1 this, this particular circumstance rose to a different level,
2 so we were more meticulous about documenting meetings and the
3 like.

4 Q. Now, you earlier testified about a, this stop-work order
5 that your company had received in connection with
6 Mr. Ferguson's work in August of 2004. As a result of that,
7 did you or any other members of your organization go to speak
8 to the mayor?

9 A. Mr. Soave went and had a meeting with the mayor. He was
10 concerned about the stop-work order and wanted to make sure
11 that there wasn't some other message there.

12 Q. And when Mr. Soave came back, what did he tell you that the
13 mayor had told him?

14 A. No, everything was fine.

15 **MS. VAN DUSEN:** Your Honor, I would object on the
16 same grounds as we discussed before.

17 **THE COURT:** Overruled on the same grounds.

18 **BY MR. CHUTKOW:**

19 Q. What did Mr. Soave tell you?

20 A. That Mr. Ferguson was still our subcontractor.

21 Q. That that was what the mayor had told him?

22 A. Yes.

23 Q. Your other partner in this contract was Insituform. Do you
24 know whether they had meetings with the mayor regarding
25 Mr. Ferguson?

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1 A. I am aware that members of their team had conversations
2 with the mayor.

3 Q. Who in particular?

4 A. Bernard Parker.

5 Q. Anybody else?

6 A. I may have other things in my notes, but as I sit here,
7 that's the only one I remember.

8 Q. All right. Do you remember a gentlemen by the name of Paul
9 Jorgensen?

10 A. Paul Jorgensen, right, Insituform, uh-huh.

11 Q. Did he ever tell you about a conversation he had had with
12 the mayor?

13 **MR. GUREWITZ:** Objection, Your Honor, hearsay.

14 **MR. RATAJ:** Yes.

15 **THE COURT:** Same ruling.

16 **BY MR. CHUTKOW:**

17 Q. Did Mr. Jorgensen ever tell you about a conversation he had
18 had with the mayor about Mr. Ferguson?

19 A. My understanding, my recollection is that Mr. Jorgensen
20 indicated that Bobby was the guy.

21 Q. That the mayor had told him that Bobby was the guy?

22 A. Yes.

23 Q. You mentioned a sinkhole on 15 Mile, I believe it was in
24 Sterling Heights?

25 A. Yes.

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1 Q. This was an emergency matter that Inland got involved in?

2 A. That's correct.

3 Q. Did Mr. Ferguson want to get a portion of that work, too,
4 the profits from any work that was done on the sinkhole?

5 A. Yes.

6 Q. And what specifically did he want?

7 A. Well, Mr. Ferguson wanted essentially the same targeted
8 deal that he had had under the 1368 contract which was
9 20 percent of revenues and the associated profit.

10 Q. Now, this emergency work up in Sterling Heights, was this
11 specialized type of stuff, not like the normal sewer repair
12 work that you were doing?

13 A. That's right. It was an emergency, and there was a huge
14 chasm in the ground, and much specialized equipment was brought
15 in, specialized crews, et cetera. The pricing under emergency
16 type work is different, so there were a number of things that
17 were different about this particular piece of work.

18 Q. And I believe you earlier testified that this was one of
19 the projects that Mr. Ferguson took credit for getting to
20 Inland?

21 A. Yes. Mr. Ferguson was ultimately very disappointed with
22 the level of revenues that he received on this job which, if I
23 recall correctly, was in excess of \$50 million, and his portion
24 was very small, and so it had to do with disappointment that it
25 wasn't the same amount, but it was all we could do for his

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1 particular, the value that he could bring to that type of work.

2 **MR. CHUTKOW:** Your Honor, if I may have one moment.

3 (Brief pause.)

4 **MR. CHUTKOW:** I'm going to move to admit a couple of
5 documents, Your Honor. I just spoke with Ms. Van Dusen, and
6 there's no objection. They are IN1-47 and IN1-50.

7 **THE COURT:** Received.

8 (Government's Exhibits IN1-47 and IN1-50 received
9 into evidence.)

10 **BY MR. CHUTKOW:**

11 Q. If we could put IN1-47 up first. And I'll give you a copy
12 if it's easier to read. Can you start with the first email,
13 and that is dated, I believe, September 15, 2005. Just tell us
14 from whom, to whom, date and content.

15 A. Right. This is an email from Dennis Oszust, the VP at
16 Inland to me regarding Amendment Number 4, and he's indicating
17 here that he heard from Tim Tousignant, who is the Insituform
18 VP, that he heard from his source in administration, whoever
19 Bernard Parker's contact is, that the amendment is being held
20 up because of the 15 Mile issue with Bobby.

21 Q. And I'll just stop you there. Did you understand that to
22 mean the, what percentages or what revenues he would receive
23 from that sinkhole amendment?

24 A. Yes.

25 Q. Okay.

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1 A. Yes. So it appears that either Dennis or someone from
2 Insituform checked with a number of other sources to check on
3 where the signed amendment was, and they heard that it's
4 awaiting executive approval.

5 He goes on to say that he's going to be meeting with
6 Bobby to settle outstanding issues with his invoices on 15 Mile
7 tomorrow and we'll see what he has to say then.

8 Q. Do you know who Victor is?

9 A. Victor Mercado, the head of the DWSD.

10 Q. And then you respond, "What are the outstanding issues with
11 Bobby?"

12 A. Right. That was in response to Dennis' last sentence,
13 where he said he was going to settle outstanding issues, and I
14 asked, "What are the outstanding issues?"

15 Q. What did you understand the issues to be?

16 A. Well, at the time, I asked, but I believe that they had to
17 do with the amount of revenue he was able to earn on that job
18 and how much profit he was going to be able to earn on that
19 job.

20 Q. I'm going to now show you what's been marked and admitted
21 as IN1-50. Put this up on the screen. If you could do the
22 same for this one.

23 A. Sure. This is an email dated October 11, 2005 from Dennis
24 Oszust again at Inland to me regarding Amendment Number 4, and
25 he's saying that there's info from Bernard Parker who, again,

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1 he is an Insituform employee, who talked to QK during the
2 weekend and the amendment is held up until Ferguson Enterprises
3 is satisfied.

4 Q. Do you know who QK is?

5 A. The mayor.

6 Q. It's Kwame Kilpatrick, but it's misspelled there?

7 A. That's right.

8 Q. What is Amendment Number 4, is that related to the
9 sinkhole?

10 A. This was, as I recall, an amendment that was subsequent to
11 the sinkhole.

12 Q. Was it for funding a portion of the proceeds that needed to
13 be appropriated to pay for the sinkhole?

14 A. I don't recall that it was for the sinkhole or additional
15 lining work that was going to follow once the sinkhole was
16 done. It was at the end of the sinkhole work, so it may have
17 had some overflow, I just don't recall.

18 Q. Okay. Earlier, you testified that in, I think it was, was
19 it December of 2005 you'd had a conversation with Mr. Ferguson
20 about some of the issues?

21 A. Yes.

22 Q. And when was this in connection, was there any sort of a
23 political event that this was shortly thereafter?

24 A. The mayor's reelection.

25 Q. Mayor of Detroit?

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1 A. The mayor of Detroit's reelection.

2 Q. So at that point what happened, did Mr. Ferguson come and
3 pay you a visit?

4 A. He had called and requested a meeting with Dennis, again
5 from Inland, and I, to cover a number of topics.

6 Q. This particular election, was there a period of time where
7 it looked like someone else was going to win?

8 A. I think it was a close election for awhile, yes. I don't
9 remember the exact result.

10 Q. Okay. So after the election, Mr. Ferguson pays you a
11 visit. Can you tell us about that conversation.

12 A. Mr. Ferguson essentially came to deliver a message, and
13 that was that he was dissatisfied with the historical
14 relationship, it had been too difficult for him, and that he
15 wasn't going to go forward under these same circumstances, and
16 then he proceeded to describe a number of different areas that
17 had been troubling to him, all of which I documented in a memo
18 subsequent to the conversation.

19 But they included a litany of items. He felt he had
20 been disrespected, he felt he had not been given appropriate
21 credit for getting Inland its work over the last four or so
22 years. He was upset about the fact that he had been required
23 to sign a note for a receivables advance from the company to
24 help him with cash flow, he was upset about conversations that
25 had been had directly by Mr. Soave or Mr. Levin with the

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1 administration, and felt that that was a violation of their
2 relationship.

3 There were a number of other things on the -- during
4 the conversation, but he essentially said we have also some
5 things to fix and your people know what they are, and I'm
6 surprised they haven't told you, but essentially I suggest you
7 find out, and then we'll make a decision about how to go
8 forward.

9 Q. Now, I may have misheard you. Did you say this was a
10 troubling meeting for you?

11 A. Yes.

12 Q. And why was that?

13 A. Well, the litany of topics covered, the fact that Inland
14 was still essentially, had this sword dangling over their head,
15 the fact that Mr. Ferguson acted as if if he had full power in
16 order to keep Inland getting work or not getting work. This
17 was going to be his decision about whether or not he went
18 forward with us.

19 Q. Did he have anything to say about Victor Mercado who was
20 the director of the water department?

21 A. There was a, as part of the conversation regarding 15 Mile
22 and his disappointment that he received so little revenue on
23 that job, we explained to him that we had made repeated
24 attempts to look for work that he could do, and indeed Inland
25 had had a conversation with Victor Mercado about minority

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1 content and was there more that he could do. Victor responded
2 to Inland, "Don't worry about that, do the job and do it well."
3 And we explained that to Bobby, and he responded that, "This
4 was a smoke screen, Kathleen." We described it to him as more
5 of a firewall, I mean, we literally tried, we looked, I know
6 the folks at Inland looked for additional work to give him, but
7 his further response was, "You act like Victor Mercado has ever
8 made a single decision there ever."

9 Q. Now, you said that you felt like there was a sword dangling
10 over your head. What did you mean by that?

11 A. Well, by this time, Soave had sold the majority of its
12 interest in Inland, but nonetheless, Inland had been a
13 contractor with the city, particularly DWSD for many, many
14 years, and the threat of potentially losing that work because
15 we had a powerful subcontractor that was unsatisfied was a
16 threat to the company.

17 Q. Now, you mentioned before that you described your
18 relationship with Mr. Ferguson as a forced marriage --

19 A. Right.

20 Q. -- do you recall that?

21 If you didn't have this sword dangling over your
22 head, would you have stayed in that marriage?

23 **MS. VAN DUSEN:** Your Honor, I will object to the
24 tone of this question. It's totally speculative, aside from
25 being ridiculous.

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1 **THE COURT:** Let's just rephrase the question. I
2 think you can rephrase it.

3 **BY MR. CHUTKOW:**

4 Q. Were you concerned about keeping your contracts with the
5 city at that time?

6 A. Inland was concerned about keeping contracts with the city,
7 indeed.

8 Q. And if you hadn't been concerned about keeping your
9 contracts with the city, would you guys have continued your
10 relationship with Mr. Ferguson?

11 A. No.

12 **MR. CHUTKOW:** I have no further questions, Your
13 Honor.

14 **THE COURT:** All right. Let's take a five-minute
15 break.

16 (Jury out 12:00 p.m.)

17 (Recess taken 12:00 until 12:13 p.m.)

18 (Jury in 12:13 p.m.)

19 **THE COURT:** Be seated.

20 Ms. Van Dusen.

21 (12:13 p.m.)

22 **CROSS EXAMINATION**

23 **BY MS. VAN DUSEN:**

24 Q. Ms. McCann, I'm Susan Van Dusen, one of the lawyers for
25 Bobby Ferguson. Nice to see you.

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1 A. Nice to see you, too.

2 Q. Thank you.

3 **A JUROR:** Could you pull the mic in front of you.

4 **MS. VAN DUSEN:** Oh, okay.

5 **BY MS. VAN DUSEN:**

6 Q. Ms. McCann, you began working for Mr. Soave, I guess, what
7 is it, about 21 years ago now?

8 A. Almost 23.

9 Q. Okay. And before that, and I know Mr. Chutkow reviewed
10 some of your background with you, but I just want to go over
11 it. You started as a CPA at Coopers & Lybrand?

12 A. Correct.

13 Q. Then you became an auditor of a company owned by Soave
14 called City Management?

15 A. Correct.

16 Q. And after that you became a controller for a waste group
17 owned by Mr. Soave?

18 A. Of City Management, correct.

19 Q. Yes.

20 A. Yes.

21 Q. And eventually rose to become part of his executive team, I
22 believe that you indicated that there were five individuals
23 holding portfolios or four individuals holding portfolios, and
24 the fifth person being the treasurer, correct?

25 A. Correct.

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1 Q. And in that role, you were -- part of your portfolio was
2 what you called the industrial services group which included
3 Inland, correct?

4 A. Correct.

5 Q. And you described, in terms of your role as -- and I wrote
6 this down, that you were to interact from a corporate
7 perspective. Could you expand on that a little bit for us,
8 please?

9 A. Sure. I think one of the things that makes Soave
10 Enterprises work so well is that there is a group of
11 professionals at the corporate headquarters that have expertise
12 in various things, whether it be legal, risk management, human
13 resources, tax, finance, et cetera, et cetera, so these
14 professionals will support the operating businesses of the
15 Soave portfolio depending on what's needed.

16 Sometimes it has to do with the level of maturity of
17 the business, sometimes it has to do with the type of business,
18 but there's general support for all the businesses in a
19 portfolio.

20 Q. I see, and you left Soave Enterprises, correct?

21 A. Correct.

22 Q. And you assumed the position, I believe you told us, in
23 January of 2011 as the CEO for United Road Services, correct?

24 A. Technically, I joined as president and became CEO earlier
25 this year.

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1 Q. Okay. And that's a company that has over a thousand
2 employees and has 300 million in revenues?

3 A. Approximately.

4 Q. That's an impressive position, and we congratulate you on
5 it. You have certainly risen through the corporate hierarchy,
6 I would say.

7 A. Thank you.

8 Q. Do you not feel that way?

9 A. I've been very fortunate.

10 Q. Yes. Now, let's go back in time to the contract CS-1368,
11 and your role in terms of your supervision of your portfolio
12 and your supervision of Inland was basically that, as an
13 overseer, correct?

14 A. I would say I was a surrogate for the owner, might be a
15 better way to describe it. There is a, there are a number of
16 strategic or other major issues that could happen at a company
17 at any point in time, where what would typically be a board or
18 someone else would come in and provide advice. So my, my role
19 was detailed in some circumstances, and not so detailed in
20 others.

21 Q. And while you were acting in that capacity you, I assume,
22 had other duties in your role with Soave Enterprises, correct?

23 A. Yes.

24 Q. And those other duties related to, what, your supervision
25 of the beer group?

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1 A. Right, my --

2 Q. For example?

3 A. For example.

4 Q. So there was no way in which this role that you were
5 playing took up the majority of your time, correct?

6 A. Correct.

7 Q. You would just sort of drop in and out of the situation,
8 and I'm assuming that you would come into the situation perhaps
9 when there was a problem that you could help solve, correct?

10 A. It may not be exactly fair to frame it as drop in and out
11 or to just solve problems. Sometimes there are strategic
12 matters associated with growth, acquisitions, major decisions
13 on insurance, or et cetera, that someone like me would be
14 involved in.

15 Q. Fair enough. You would have valuable input into any
16 discussions relating to those matters, I would assume, correct?

17 A. That's correct.

18 Q. Now, the person, and correct me if you don't agree with
19 this, but would you describe Mr. Oszust as the point person on
20 this contract CS-1368, your point person?

21 A. Inland's point person, indeed.

22 Q. Yes, and he was a senior vice president at Inland, correct?

23 A. Correct.

24 Q. Although I notice in the correspondence he identifies
25 himself -- and we'll come to some of his correspondence -- as

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1 utilities manager. That was an additional role, a role in
2 addition to senior vice president?

3 A. I think it's a function of titles more than anything, so I
4 can't speak specifically to titles, but he had a high level of
5 responsibility and was clearly the point person on this
6 contract.

7 Q. And he communicated regularly with you about what was going
8 on on this, both the bidding of the contract and the process,
9 and then I'm assuming the work as it developed, correct?

10 A. Yeah, with some regularity, yes.

11 Q. Yes. And of course, the two of you, in this day and age,
12 there was a lot of communication by email where he brought you
13 up to date on certain things, correct?

14 A. That's correct.

15 Q. And, in fact, though from what you would know about what
16 was going on with the nitty gritty of this contract, that you
17 got from Mr. Oszust, right?

18 A. The majority of it, yes.

19 Q. Because he was on the site, correct?

20 A. Correct.

21 Q. And additionally, there was a Walter Rozycki, correct?

22 A. Yes.

23 Q. What was Mr. Rozycki's position?

24 A. I can't give you his exact title, but, again, very involved
25 in the sewer lining part of our business.

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1 Q. On a day-to-day basis, correct?

2 A. Yes.

3 Q. So the information that you would get relating to the
4 progress of either the work or even interactions with
5 Mr. Ferguson, that would all come to you primarily from
6 Mr. Oszust and Mr. Rozycki, correct?

7 A. That's correct.

8 Q. Now, let's go to the specific contract.

9 **MS. VAN DUSEN:** And, Your Honor, for the sake of
10 both yourself, the jury, my fellow counsel, I'm going to try to
11 condense this process a little bit.

12 **THE COURT:** That's good.

13 **MS. VAN DUSEN:** We've all been through it --

14 **THE COURT:** Everyone thanks you.

15 **MS. VAN DUSEN:** We've all been through it, but
16 Ms. McCann not, so you'll have to just indulge me here a little
17 bit, okay?

18 **BY MS. VAN DUSEN:**

19 Q. In the fall of 2001, contract 1368 was bid, correct?

20 A. Yes.

21 Q. And Inland had the low bid, correct?

22 A. Yes.

23 Q. And the high score, right?

24 A. That's my understanding.

25 Q. And it was a \$50 million contract, correct?

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1 A. Two 25's.

2 Q. Yes, put together, 50 million?

3 A. Yes.

4 Q. Now, when you were interviewed by FBI Special Agent
5 Beeckman, and that interview, if you recall, was in May of
6 2010, do you recall that?

7 A. I remember the interview.

8 Q. Yes, and he interviewed you just once, correct?

9 A. I believe so.

10 Q. Yes, and in the course of that interview, you provided a
11 really large number of documents which I believe you actually
12 characterized as your 1368 file, correct?

13 A. I don't know that I characterized it that way, but I did
14 supply a number of documents, yes.

15 Q. And they all related to that contract and/or amendments to
16 that contract, correct?

17 A. In large part, I think that's true.

18 Q. Yes. So just to take a look at a couple of these. First,
19 we see, this is really, at least in the package of documents
20 that I had in terms of what you gave, this is one of the
21 earlier documents dated December 19, 2001 in evidence as
22 DIN1-6, and what this shows us, does it not, Ms. McCann, that
23 Kathy Leavey as the interim director of the department is
24 reporting that the Board of Water Commissioners has authorized
25 her to enter into a contract with Inland Waters, correct?

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1 A. That's my understanding, yes.

2 Q. Yes. And this is really the beginning of the official
3 process after the bid, correct, this notice to you, to Inland?

4 A. It's early in the process. I'm not intimately familiar
5 with every step.

6 Q. Well, let's just see about going through it. We see here,
7 and I'm inviting your attention and advising you, and this is
8 the third page of this document, and we see there under the
9 category called "Project Management Status, Start Work Date,"
10 do you see that?

11 A. Yes.

12 Q. Could you read what it says opposite that?

13 A. "To be established contingent upon Detroit City Council
14 approval."

15 Q. Right. And you had this document in your file, correct?

16 A. Yes.

17 Q. Reading this document, as I'm sure you did, you knew that
18 the actual starting work on this contract was, and I quote,
19 Contingent upon Detroit City Council approval," right?

20 A. They ultimately need to approve all these big contracts,
21 yes.

22 Q. Right. So when you told us earlier today, in the same way
23 that you told Agent Beeckman during the interview, that it was
24 only when Inland added Mr. Ferguson's company that the mayor
25 approved the contract, that was not correct.

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1 **MR. CHUTKOW:** Objection, that mischaracterizes her
2 testimony. She didn't say he approved it. She said it was
3 held up before it got to city council.

4 **THE COURT:** Sustained. You need to rephrase that
5 question.

6 **BY MS. VAN DUSEN:**

7 Q. Do you recall -- we've already talked about the interview,
8 correct, with Mr. Beeckman?

9 A. Yes.

10 Q. Inviting your attention to a report of interview, because
11 I'm sure you noticed during that interview that Mr. Beeckman
12 was taking notes, correct?

13 A. Yes.

14 Q. Yes. And that interview, as I believe I've already
15 indicated, was in May of 2010, correct?

16 A. Give or take, yes.

17 Q. Yeah, and it's probably reasonable to say that your memory
18 of events, understanding it was back in 2002, for example, was
19 at that time eight years earlier, is it safe to say that your
20 memory in terms of that interview with Agent Beeckman was
21 probably better than it may be today?

22 A. I had the same documents then that I had today, so it's
23 probably similar.

24 Q. So, really, you had to rely on the documents to bring this
25 all back to you, is that what you're telling us?

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1 A. Certainly, documents help you remember the facts as they
2 occurred.

3 Q. Absolutely. As do your notes, I'm sure, correct?

4 A. Absolutely.

5 Q. Okay. So when you spoke to Mr. Beeckman, you definitely
6 wanted to be as thorough as possible, correct?

7 A. I wanted to be as honest as possible.

8 Q. Absolutely. So in your efforts to be as honest as
9 possible, which is exactly what you need to be when you're
10 talking to an FBI agent, that you were very careful in how you
11 remembered things, correct?

12 A. Again, I tried to recall to the best of my ability but be
13 honest with what I remembered and what I didn't.

14 Q. Absolutely, because your intent was to be as truthful as
15 you possibly could be based on the recollection of events that
16 you had at the time of that interview, correct?

17 A. That's right.

18 Q. Okay.

19 **MR. CHUTKOW:** Ms. Van Dusen, will you please show me
20 what you're going to show her?

21 **MS. VAN DUSEN:** Oh, I'm sorry.

22 **BY MS. VAN DUSEN:**

23 Q. Ms. McCann, inviting your attention to this sentence right
24 here, and you're free to read the whole page or whatever you
25 want, the whole document, just read that and then I'm going to

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1 ask you a couple questions.

2 A. Okay. This is a --

3 Q. Oh, Ms. McCann --

4 A. Yes.

5 Q. -- read it to yourself.

6 A. Oh, thank you.

7 Q. Sorry.

8 Ms. McCann, having now read that document which
9 reflects your interview with Special Agent Beeckman, is your
10 memory now refreshed that you indicated to Agent Beeckman that
11 the mayor had to approve the contract?

12 A. I did say that the mayor approves the contract in my
13 interview.

14 Q. And what did you say at the first part of the sentence?

15 **MR. CHUTKOW:** Objection, this is improper
16 impeachment. She can ask her what she remembers.

17 **THE COURT:** Sustained.

18 **BY MS. VAN DUSEN:**

19 Q. Yeah, what do you remember about that portion of the
20 interview, Ms. McCann?

21 A. I can't say I remember this specific moment, but I'm sure,
22 I mean, this says that in a letter from the DWSD --

23 **MR. CHUTKOW:** Ms. McCann --

24 A. Yes.

25 **MR. CHUTKOW:** You can simply -- well, I'll let the

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1 judge tell you what to do.

2 **THE WITNESS:** Okay.

3 **THE COURT:** Just -- could we have a sidebar, please.
4 (The following sidebar conference was held:)

5 **THE COURT:** I know you asked for indulgence, but we
6 have been over this so many times. Whether he had the power to
7 approve the contract or not, she was under the impression, as
8 was Mr. Soave --

9 **MR. THOMAS:** You know, Judge, the witness is right
10 here, she can hear exactly what you're saying.

11 **THE COURT:** All right. Based on the memo that they
12 received that this contract was being held up, whether he had
13 the ultimate power to approve it or not, and we've already
14 established that there's no signature block. I need to know
15 what you're doing here because I don't think it's appropriate
16 to spend another hour going over this same stuff that we've
17 gone through with two other witnesses already.

18 **MS. VAN DUSEN:** I think that my intent is that, it
19 is actually my, what I believe is Sixth Amendment right to
20 confront this witness with her mistaken belief which,
21 Your Honor, drove their actions. They were just dead wrong in
22 not understanding the steps, and this contract didn't --

23 **THE COURT:** Well --

24 **MS. VAN DUSEN:** I know. And I don't know how to do
25 it, but I feel I need to impeach her credibility in terms of

1 her mistaken belief.

2 **THE COURT:** Her mistaken belief has nothing to do
3 with this. I will tell you that, I mean, I've heard this
4 argument now for the last two weeks with all these witnesses.
5 The fact is, whether he had the power, they believed he had the
6 power, and it was being held up, and the salient fact is what
7 occurred at that meeting and what happened afterwards.

8 **MS. VAN DUSEN:** Occurred at which meeting,
9 Your Honor?

10 **THE COURT:** The meeting that Mr. Soave had with the
11 mayor.

12 **MS. VAN DUSEN:** Oh, okay.

13 **THE COURT:** So, you know, if they were wrong, they
14 were wrong. Big deal. We've done this, like, at least four
15 times.

16 **MR. THOMAS:** Judge, they keep on putting witnesses
17 up to say what their motivation was. We have to be able to
18 challenge the motivation. If it was based on Mr. Soave's
19 representation, and we want to argue that it didn't -- it did
20 not occur the way Mr. Soave remembers --

21 **THE COURT:** What did not occur?

22 **MR. THOMAS:** That Mr. Soave had a conversation with
23 the mayor and that the mayor had a, he had a clear impression
24 that the mayor wanted Bobby Ferguson. Let's say, for the sake
25 of argument, that we argue Mr. Soave's credibility, and that

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1 his credibility has been in some fashion challenged, okay, then
2 the mistaken belief on their part is relevant because the mayor
3 has no power.

4 **THE COURT:** I'll give you some latitude on this but,
5 you know --

6 **MR. THOMAS:** They put on witnesses every time and
7 ask the question. We need to be able to rebut it, each
8 witness.

9 **THE COURT:** Well, I'm not going to give you hours of
10 cross examination on this, I'll tell you right now. You better
11 move through this more quickly.

12 **MR. CHUTKOW:** Judge, can I just add one thing?
13 We've already talked about a summary statement of a, of an
14 agent not being -- I mean, she's, in essence, by going line by
15 line through it, is doing what you're not supposed to do, which
16 is to impeach the witness on it.

17 And, you know, this whole concept is misleading.
18 The fact someone approves something doesn't mean they have to
19 sign the document. That just means that they say go forward.

20 **MS. VAN DUSEN:** You can argue that.

21 **THE COURT:** You ask it, too, but you can't use it
22 that way.

23 **MS. VAN DUSEN:** I've got to kind of think of a way
24 to switch things around now, you know, to condense a few
25 chapters.

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1 **THE COURT:** Please do.

2 **MS. VAN DUSEN:** I'll do my best, Your Honor.

3 (End of discussion at sidebar.)

4 **BY MS. VAN DUSEN:**

5 Q. Ms. McCann, we're back. With your familiarity with the
6 documents -- and by the way, did you review documents prior to
7 testifying here today?

8 A. Yes, certain documents, not all documents, clearly.

9 Q. Did you review what was the file that you had turned over
10 to Agent Beeckman?

11 A. How recently would you like to know?

12 Q. Well, I would like to know any time you did that.

13 A. I've -- probably when I had my preparatory meetings with my
14 attorneys, I reviewed that file for getting ready to testify.

15 Q. You spoke to your own attorneys, but I'm assuming you also
16 spoke to the government attorneys, correct?

17 A. Yes.

18 Q. And did you review the 302 prepared by Agent Beeckman of
19 his interview of you in May of 2010?

20 A. Not prior to meeting with him, but subsequently.

21 Q. So before you came on the witness stand today, you reviewed
22 that document, correct?

23 A. Within the last couple weeks I've reviewed it, yes.

24 Q. And did you make any changes or corrections in that
25 document that you advised the government did not reflect your

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1 statement?

2 A. I advised my attorneys of a few, what I'll call, nits and
3 lice that don't change substantively the message of what's in
4 that document.

5 Q. And to your knowledge, did they convey that, those nits and
6 lice to the government?

7 A. I don't know.

8 Q. Have you seen the 302 in its entirety that I was showing
9 you earlier, and did you notice if any of those changes had
10 been made?

11 A. If the 302 is my interview summary --

12 Q. I apologize, it's --

13 A. I have only seen the one copy that I was given originally.

14 Q. The original copy from May of 2010, correct?

15 A. That's right.

16 **MS. VAN DUSEN:** And for the jury's benefit, Your
17 Honor, I should say when I call it a 302, it's an FBI 302.
18 That's our number for it. It's kind of like a tax return being
19 a 1040. It's just a federal number that's assigned to that
20 document. Thank you, Your Honor.

21 **THE COURT:** Generally speaking, it's a report of an
22 agent of an interview that they have taken of a witness.

23 **BY MS. VAN DUSEN:**

24 Q. Now, just going to the approval of this contract, that was
25 an approval by the Board of Water Commissioners during the

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1 tenure of Mayor Dennis Archer, correct?

2 A. Yes, it was.

3 Q. Now, you are familiar with the fact that in February of
4 2002, Mr. Oszust, you know, who I know reported to you
5 regularly, advised you that he had furnished certain documents
6 to DWSD, correct? And you look puzzled, so let me show you.

7 I'm now showing you what's in evidence as DIN1-9,
8 and you'll tell us if that is what, in your recollection, is
9 the document that Mr. Oszust furnished.

10 A. This looks like a document that Dennis would have signed,
11 and it's very possible it was in my records.

12 Q. Finished?

13 A. Just the first page.

14 Q. Well, take a look at the attachments, please.

15 **MR. CHUTKOW:** Your Honor, I'm going to object. At
16 least my exhibit here says "Kilpatrick subpoena" on it, so this
17 must have been subpoenaed from the city. I don't know see how
18 it could have been in her office and at the city at the same
19 time.

20 **MS. VAN DUSEN:** Your Honor, that document is
21 specifically identified in, as being furnished by her in the
22 FBI 302. My actual copy of it, or that which came in as
23 DIN1-9, may have come from the Kilpatrick subpoena, but it's
24 the exact document referenced in her FBI 302.

25 **THE COURT:** I'll permit it. Just using it to

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1 refresh her recollection at this point anyway --

2 **MS. VAN DUSEN:** Yes.

3 **THE COURT:** -- and it's already in evidence from
4 some other source.

5 **BY MS. VAN DUSEN:**

6 Q. Just to summarize this document for the jury, what we see
7 here is that, in February, Mr. Oszust was just furnishing these
8 required documents to DWSD including documents relating to the
9 bond, insurance, that type of thing, correct?

10 A. According to that document.

11 Q. Yes. So, in fact, the approval process was in place,
12 correct?

13 A. Again, I'm not intimately familiar with all the steps in
14 the approval process, so the timing of the filing of this is
15 really outside my scope of understanding, but I see that he did
16 it on that date.

17 Q. Now, you knew, did you not, that Inland had actually even
18 submitted an invoice for payment as early as March of 2002,
19 correct?

20 A. I wouldn't necessarily know that. Again, I was not in the
21 granular detail.

22 Q. Okay. Mr. Oszust didn't advise you of that?

23 A. I don't recall if he did or didn't, but it would be unusual
24 for him to advise me of submitting individual invoices.

25 Q. All right. So to find out about that, we have to ask

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1 Mr. Oszust, correct?

2 A. I don't have any detail about it.

3 Q. All right. But getting all the way ahead to the latter
4 stages of this process, Ms. McCann, this document is in
5 evidence as DIN1-14A, and it's the signature page on the back
6 of Inland's contract. Do you recognize that document?

7 A. Not specifically, but I'll accept that that's what it is.

8 Q. You've seen the Inland contract, correct?

9 A. Yes, sure.

10 Q. And you saw, I'm assuming when you reviewed it, that the
11 approval process continued through the spring of 2002
12 culminating in the contract being approved, if you'll look
13 there at the screen, please, June 26, 2002, correct?

14 A. I see that it was approved on June 26th.

15 Q. Right. By the city council, correct?

16 A. Yes.

17 Q. By the, in the very same way in which the first document we
18 looked at said that the start-work date letter would be issued
19 once city council approved it, correct?

20 A. Yes.

21 Q. Do you recall that?

22 A. Yes.

23 Q. And on this document, we don't see any signature line for
24 the mayor, correct?

25 A. That's correct.

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1 Q. So he has no signing off authority on this, does he?

2 A. It depends on whether you're talking about written
3 signatures or approvals, and our understanding was that the
4 contract went through the mayor's office before it got to city
5 council.

6 Q. Ms. McCann, if I could just take you back, what did you say
7 about written sig -- signatures versus written approval? I
8 need you to say that again.

9 **MR. CHUTKOW:** I'll object. She said approval, not
10 written approval.

11 **MS. VAN DUSEN:** That's why I needed to hear it again
12 because I wasn't --

13 **BY MS. VAN DUSEN:**

14 Q. Could you just repeat your last answer, please?

15 A. I think --

16 **THE COURT:** Do you want the court reporter to read
17 it back?

18 **MS. VAN DUSEN:** Yes.

19 **THE COURT:** Suzanne, please.

20 (The record was read by the court reporter as
21 follows:

22 "Question: So he has no signing off authority on
23 this, does he?

24 "Answer: It depends on whether you're talking
25 about written signatures or approvals, and our

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1 understanding was that the contract went through
2 the mayor's office before it got to city
3 council.")

4 **BY MS. VAN DUSEN:**

5 Q. Ms. McCann, see if you agree with me, the contract has to
6 go through the budget office, correct?

7 A. Again, I'm not intimately familiar with every step of the
8 process, so I may have a difficult time agreeing or disagreeing
9 with you.

10 Q. Did you know if it went through the budget office?

11 A. Sounds reasonable.

12 Q. Did you know if it went through the purchasing office?

13 A. Yes.

14 Q. You knew that?

15 A. Again, sounds reasonable.

16 Q. Did you know that the contract had to go to the law
17 department, correct?

18 A. Sounds reasonable.

19 **MR. CHUTKOW:** Your Honor, at this point, this seems
20 to be a waste of time. I mean, she doesn't have the
21 foundation. She's just saying what is reasonable or not.

22 **MS. VAN DUSEN:** Your Honor --

23 **THE COURT:** Go ahead. I'll overrule it. You can
24 ask.

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1 **BY MS. VAN DUSEN:**

2 Q. Ms. McCann, not a single one of those departments is a part
3 of the mayor's office, correct?

4 A. That's my understanding. Again, intimate familiarity is
5 lacking.

6 Q. Well, you didn't let your lack of intimate familiarity stop
7 you from drawing the conclusion that this contract had been
8 held up in the mayor's office. You didn't say to yourself, "I
9 don't know enough about this to make that judgment," did you?

10 A. That's because there are other people that have familiarity
11 that were part of our team that thought that was what had
12 happened, and indeed, I would suggest that after Mr. Soave met
13 with the mayor and things started moving that it proved out
14 that supposition.

15 Q. That was your conclusion based on what Mr. Soave told you,
16 correct?

17 A. Correct.

18 Q. You have no personal knowledge of that, correct?

19 A. Correct.

20 Q. Now, you say there were people within. Would that be
21 within Soave Enterprises or Inland Waters who knew what had
22 happened?

23 A. What I was referring to is the specific process, that
24 Inland folks have knowledge of the specific process.

25 Q. So who are these individuals within Inland who knew what

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1 was happening?

2 A. Well, Dennis Oszust, as I indicated, was the point person
3 on the contract and had worked intimately with the DWSD through
4 repeated bids, so he would, he would have that knowledge.

5 Q. So if I can just distill this down, it's Dennis Oszust who
6 told you and/or Mr. Soave that this contract was being held up,
7 is that a correct -- do I understand that correctly?

8 A. Well, it was obvious to everyone we didn't have a contract
9 yet, so we didn't need to be told that it wasn't done, so we
10 knew that. And then beyond that, it's figuring out why not,
11 why not, and we couldn't figure out why not, so that was -- it
12 was concluded that it was in the mayor's office.

13 Q. You just automatically concluded that that's where it was,
14 you didn't stop and think, well, maybe it's still in
15 purchasing, maybe it's in budget, maybe it's in the law
16 department? You didn't think that?

17 A. My recollection is that to the extent that those facts
18 could be determined, there wasn't anything that led Dennis to
19 believe that the contract was in any of those places, so
20 ultimately the decision was made to check with the mayor.

21 Q. Okay. Now, now, the fact that this contract was awarded in
22 the fall of 2001 and now we're in the spring of 2002 and it's a
23 \$50 million contract, there's a lot at stake here, that's not a
24 long time, if you know, for these things to wend their way to
25 final approval by the city council.

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1 A. All I do know is that there was enough concern that the
2 contract had not been let yet. It seemed long to those that
3 were familiar with the process.

4 Q. So Dennis got anxious.

5 A. I think everyone was anxious.

6 Q. But he was the source of the information as to this
7 conclusion that the contract was being held up, right?

8 A. I can't say he was the exclusive source. The fact is the
9 contract had not been let, and it had seemed to take a very
10 long time. Inland was running out of work to do on its
11 remaining contract, and there was concern about why it was not
12 being issued.

13 Q. The concern really was, may I suggest, that you were
14 running out of work on the other contract, not that there was a
15 time lag with this other one. That's what he was concerned
16 about, correct?

17 A. The two go hand in hand.

18 Q. He needed a reason to explain why that 1368 had not been
19 approved yet by city council, correct?

20 A. He didn't need a reason with us.

21 Q. He was getting no static from anybody?

22 A. Not static, no. Inquiries, support, where is the contract.

23 Q. So in order to answer the inquiries of his bosses he needed
24 to come up with a reason, correct?

25 **MR. CHUTKOW:** Objection, calls for speculation.

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1 **THE COURT:** Overruled. You may answer.

2 A. He wasn't getting pressure from his bosses. He would
3 legitimately seek an answer. Everyone was curious as to the
4 reasons the contract had not been issued. It's seemed unusual.

5 **BY MS. VAN DUSEN:**

6 Q. I understand that, but curiosity and fact, you would agree,
7 are two very different things, correct?

8 A. Curiosity and fact are indeed different.

9 **MS. VAN DUSEN:** Your Honor, I'm in a totally
10 different chapter.

11 **THE COURT:** All right. We can stop. So it's
12 Friday. Have a nice weekend everyone.

13 (Jury out 12:55 p.m.)

14 (Proceedings adjourned at 12:55 p.m.)

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C E R T I F I C A T I O N

I, Suzanne Jacques, Official Court Reporter for the United States District Court, Eastern District of Michigan, Southern Division, hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date set forth.

Date: December 7, 2012

s:/Suzanne Jacques
Suzanne Jacques

Official Court Reporter